In the

United States Court of Appeals

For the Seventh Circuit

No. 10748

RHODES PHARMACAL COMPANY, INC., ET AL.,
Petitioners,

vs.

FEDERAL TRADE COMMISSION,
Respondent.

Petition for Review of Order of the Federal Trade Commission.

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UNITED STATES OF AMERICA.

BEFORE FEDERAL TRADE COMMISSION, ss:

In the matter of
Rhodes Pharmacal Company, Inc. *et al.* } Docket No. 5691.

I, D. C. Daniel, Secretary of the Federal Trade Commission and official custodian of its records, do hereby certify that transmitted herewith is a full, true and complete transcript of proceedings had before the Federal Trade Commission in the above entitled matter, consisting of:

Part 1—Pleadings.
Part 2—Testimony (Pages 1 to 573, incl.).
Part 3—Testimony (Pages 574 to 1219, incl.).
Part 4—Exhibits.

and separate original exhibits marked:

2-1	2-2
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That this transcript is certified to the United States Court of Appeals for the Seventh Circuit, pursuant to the filing in said Court of a petition for review of a Decision of the Commission (adopting Hearing Examiner's Initial Decision and Order to Cease and Desist) and Order to file Report of Compliance issued by the Federal Trade Commission October 3, 1952, in the above indicated proceeding.

In witness whereof, I hereunto subscribe my name, and affix the seal of the said Federal Trade Commission, at its office in the City of Washington, D. C., this 29th day of December, A. D. 1952.

(Seal)

D. C. Daniel,
Secretary.

2 UNITED STATES OF AMERICA.

BEFORE FEDERAL TRADE COMMISSION.

In the Matter of Rhodes Pharmacal Company, Inc. and J. Sanford Rose and Jerome H. Rose, individually and as officers of Rhodes Pharmacal Company, Inc.	Docket No. 5691.

COMPLAINT.

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Rhodes Pharmacal Company, Inc., and J. Sanford Rose and Jerome H. Rose, individually and as officers of Rhodes Pharmacal Company, Inc., hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

Paragraph One: Respondent Rhodes Pharmacal Company, Inc. is a corporation organized under the laws of the State of Ohio, and having its office and principal place of business at 1814 East 40th Street, Cleveland, Ohio.

Respondents J. Sanford Rose and Jerome H. Rose are respectively the President and the Vice-President and Treasurer of Rhodes Pharmacal Company, Inc. and have offices and places of business at 1814 East 40th Street, Cleveland, Ohio. The said individual respondents are now and at all times mentioned herein have been in control of the management, policies and operation of Rhodes Pharmacal Company, Inc., particularly in respect to the acts, practices and methods herein alleged.

Paragraph Two: Respondents are now, and have been for more than six months last past, engaged in the business of manufacturing, selling and distributing a certain drug product, as "drug" is defined in the Federal Trade Commission Act.

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3 The designation used by respondents for the said product, and the formula and directions for use thereof are as follows:

Designation: Imdrin.
Formula: Each tablet contains—

Acetylsalicylic acid	1.9 grains
Manganese salicylate	1.5 grains
Calcium succinate (anhydrous)	2.3 grains
Caffeine	.16 grains
Thiamine chloride	1 mg.

Directions: Two tablets before each meal with water.

Respondents cause the said product, when sold, to be transported from their place of business in the State of Ohio to purchasers thereof located in other States of the United States and in the District of Columbia. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in the said product in commerce between and among the various States of the United States and in the District of Columbia. Respondents' volume of business in such commerce is substantial, sales for the last quarter of 1948 being in excess of $250,000.00.

Paragraph Three: In the course and conduct of their business the respondents, subsequent to March 21, 1938, have disseminated and caused the dissemination of certain advertisements concerning Imdrin by the United States mails and by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act, for the purpose of inducing and which were likely to induce its purchase.

Among their advertisements are the following:

Radio continuities which were placed subsequent to September 1, 1948, for respondents by their advertising agency with, and broadcast by various radio broadcasting stations, including, but not limited to, the following stations:

WJJD —Chicago, Illinois
WHN —New York, New York
WPIX —New York, New York
WOV —New York, New York
KWTO —Springfield, Missouri
KWKH—Shreveport, Louisiana
WWVA—Wheeling, West Virginia.

4 Advertisements which were prepared subsequent to September 1, 1948, for respondents by their advertising agency, and published or caused to be published by said respondents in various newspapers, including, but not limited to the following newspapers and issues thereof:

Washington (D. C.) "Times Herald"—Issues of March 11, 24 and April 18, 1949
Washington (D. C.) "Daily News"—Issue of March 15, 1949
Washington (D. C.) "Post"
Baltimore (Md.) "Sun"
Philadelphia (Pa.) "Bulletin"
Philadelphia (Pa.) "Inquirer"
Birmingham (Ala.) "News Age Herald"
Cleveland (Ohio) "Plain Dealer"—Issues of January 9, 16, 23, 30, February 6, 13, 1949
Syracuse (N. Y.) "Herald Journal"—Issue of February 17, 1949
Rochester (N. Y.) "Times"—Issue of January 27, 1949
Bluefield (W. Va.) "Daily Telegraph"—Issue of April 1, 1949
Seattle (Wash.) "Daily Times"—Issue of March 11, 1949
Atlanta (Ga.) "Constitution"—Issue of March 10, 1949
Washington (D. C.) "Star"—Issues of April 26, 19, 1949
Indianapolis (Ind.) "News"—Issue of February 15, 1949
Baltimore (Md.) "American"—Issue of May 7, 1949
New Orleans (La.) "States"—Issues of November 18, 1948, and April 27, 1949
South Bend (Ind.) "Tribune"—Issues of February 13, 1949, and March 27, 1949
Shreveport (La.) "Times"—Issue of March 13, 1949
5 Baltimore (Md.) "News-Post"—Issue of January 14, 1949
Syracuse (N. Y.) "Herald Examiner"—Issue of January 16, 1949
St. Louis (Mo.) "Globe Democrat"—Issue of February 13, 1949
Clarksburg (W. Va.) "Exponent-Telegram"—Issue of March 13, 1949
Rochester (N. Y.) "Sun"—Issue of April 14, 1949
Boston (Mass.) "Daily Record"—Issue of March 15, 1949

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St. Paul (Minn.) "Pioneer Press"—Issue of January 23, 1949
New York (N. Y.) "Sunday News"—Issues of January 16, 30, 1949, Feb. 27, 1949 and May 15, 1949
Cedar Rapids (Iowa) "Gazette"—Issue of March 13, 1949
Springfield (Ill.) "Illinois State Journal"—Issue of Jan. 21, 1949
Louisville (Ky.) "Times"—Issue of February 11, 1949
Chicago (Ill.) "Tribune"—Issues of January 1, 19, 21, 26, 28, 31, February 7, 9, 12, 13, 21, March 6, 13, 27, 30, and April 19, 1949.
Counter cards and folders.

Respondents have also disseminated and caused the dissemination of the advertisements referred to above for the purpose of inducing and the said advertisements were likely to induce, directly or indirectly, the purchase of Imdrin in commerce, as "commerce" is defined in the Federal Trade Commission Act.

Paragraph Four: Through the use of the said advertisements respondents have made, directly and by implication, the representations shown in the following sub-paragraphs identified as (A) to (F) inclusive. The said advertisements, by reason of the said representations, are misleading in material respects and constitute "false advertisements" as that term is defined in the Federal Trade Commis-
6 sion Act by reason of the true facts which are set forth in sub-paragraphs (1) to (7) inclusive.

(A) That Imdrin is an adequate, effective and reliable treatment for all kinds of arthritis and rheumatism, neuritis, sciatica, gout, neuralgia, fibrositis and bursitis.

(1) Imdrin, however taken, is not an adequate, effective or reliable treatment for any kind of arthritis or rheumatism, neuritis, sciatica, gout, neuralgia, fibrositis or bursitis.

(B) That Imdrin will arrest progress of, correct the underlying causes of and cure all kinds of arthritis or rheumatism, neuritis, sciatica, gout, neuralgia, fibrositis and bursitis.

(2) Imdrin, however taken, will not arrest the progress of, correct the underlying causes of, and will not cure any kind of arthritis or rheumatism, neuritis, sciatica, gout, neuralgia, fibrositis or bursitis.

(C) That Imdrin is an adequate, effective and reliable

treatment for the symptoms and manifestations of all kinds of arthritis or rheumatism, neuritis, sciatica, gout, neuralgia, fibrositis, and bursitis, and will afford complete and immediate relief from the aches, pains, and discomforts thereof.

(3) Imdrin, however taken, is not an adequate, effective or reliable treatment for the symptoms or manifestations of any kind of arthritis or rheumatism, neuritis, sciatica, gout, neuralgia, fibrositis or bursitis; the aches, pains and discomforts incident to those ailments may be of such a nature that they will be in no way alleviated by the use of Imdrin, however taken, and in other cases the relief afforded will be limited to such degree of temporary and partial analgesic and antipyretic effects as its content of acetylsalicylic acid, commonly known as aspirin, and manganese salicylate may afford in the individual case.

7 (4) The effect of Imdrin when used in any of the ailments mentioned herein is limited to temporary and partial relief of minor aches and pains and fever.

(D) That Imdrin is a remarkable, amazing, sensational new discovery of scientific research.

(5) Neither the composition nor the effects of Imdrin is remarkable, amazing or sensational.

(E) That by taking Imdrin those afflicted with the ailments mentioned herein will be enabled to resume their normal living and usual occupations.

(6) Persons afflicted with these ailments so severely as to interfere with their normal habits of life or their ability to carry on their regular occupations will not be enabled to resume such habits or occupations by taking Imdrin.

(F) That Imdrin will correct any disturbance of, and will insure adequate function of, the vital enzyme systems of the blood and bones.

(7) Imdrin, however taken, will not correct disturbances of, nor insure adequate function of, the enzyme systems of the blood or bones.

Paragraph Five: The use by respondents of the said false advertisements with respect to Imdrin has had the capacity and tendency to mislead and deceive, and has misled and deceived, a substantial portion of the purchasing public into the erroneous and mistaken belief that the representations and statements contained therein were true, and into the purchase of substantial quantities of Imdrin by reason of said erroneous and mistaken belief.

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Paragraph Six: The aforesaid acts and practices of respondents, as herein alleged, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

Wherefore, The Premises Considered, the Federal Trade Commission on this 17th day of August, A. D. 1949, issues its complaint against said respondents.

8 Notice.

Notice is hereby given you, Rhodes Pharmacal Company, Inc. and J. Sanford Rose and Jerome H. Rose, individually and as officers of Rhodes Pharmacal Company, Inc., respondents herein, that the 30th day of September, A. D. 1949, at 2 o'clock in the afternoon, is hereby fixed as the time, and the offices of the Federal Trade Commission in the City of Washington, D. C., as the place, when and where a hearing will be had on the charges set forth in this complaint, at which time and place you will have the right, under said Act, to appear and show cause why an order should not be entered by said Commission requiring you to cease and desist from the violations of the law charged in the complaint.

You are notified and required, on or before the twentieth day after service upon you of this complaint, to file with the Commission an answer to the complaint. If answer is filed and if your appearance at the place and on the date above stated be not required, due notice to that effect will be given you. The Rules of Practice adopted by the Commission with respect to answers or failure to appear or answer (Rule VIII) provide as follows:

In case of desire to contest the proceeding the respondent shall, within twenty (20) days from the service of the complaint, file with the Commission an answer to the complaint. Such answer shall contain a concise statement of the facts which constitute the ground of defense. Respondent shall specifically admit or deny or explain each of the facts alleged in the complaint, unless respondent is without knowledge, in which case respondent shall so state.

* * * * *

Failure of the respondent to file answer within the time above provided and failure to appear at the time and place fixed for hearing shall be deemed to authorize the Commis-

sion, without further notice to respondent, to proceed in regular course on the charges set forth in the complaint.

If respondent desires to waive hearing on the allegations of fact set forth in the complaint and not to contest the
9 facts, the answer may consist of a statement that respondent admits all the material allegations of fact charged in the complaint to be true. Such answer will constitute a waiver of any hearing as to the facts alleged in the complaint and the Commission may proceed to make its findings as to the facts and conclusions based upon such answer and enter its order disposing of the matter without any intervening procedure. The respondent may, however, reserve in such answer the right to other intervening procedure, including a hearing upon proposed conclusions of fact or law, in which event he may in accordance with Rule XXIV file his brief directed solely to the questions reserved.

Upon request made within fifteen (15) days after service of the complaint, any party shall be afforded opportunity for the submission of facts, arguments, offers of settlement or proposals of adjustment where time, the nature of the proceeding and the public interest permit, and due consideration shall be given to the same. Such submission shall be in writing. The filing of such request shall not operate to delay the filing of the answer.

In Witness Whereof, the Federal Trade Commission has caused this, its complaint, to be signed by its Secretary and its official seal to be hereto affixed, at Washington, D. C., this 17th day of August, A. D. 1949.

By the Commission.

D. C. Daniel,
Secretary.

(Seal)

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11 UNITED STATES OF AMERICA.

BEFORE FEDERAL TRADE COMMISSION.

* * (Caption—5691) * *

ANSWER OF RESPONDENTS, RHODES PHARMACAL COMPANY, INC. AND J. SANFORD ROSE AND JEROME H. ROSE, INDIVIDUALLY AND AS OFFICERS OF RHODES PHARMACAL COMPANY, INC.

(Received Sept. 12, 1949, Fed. Trade Com., Secretary.)

Now come Rhodes Pharmacal Company, Inc. and J. Sanford Rose and Jerome H. Rose, individually and as officers of Rhodes Pharmacal Company, Inc., by Frank E. and Arthur Gettleman and James Goding, their attorneys, and for answer to the complaint herein says:

Paragraph One. In answer to Paragraph One of the complaint, these Respondents jointly and severally admit Paragraph One of said complaint.

Paragraph Two. In answer to Paragraph Two of the complaint, these Respondents jointly and severally admit Paragraph Two of the complaint herein.

Paragraph Three. In answer to Paragraph Three of the complaint, these Respondents jointly and severally admit said Paragraph Three.

12 Paragraph Four. In answer to Paragraph Four of the complaint, these Respondents jointly and severally deny that they made, published, or disseminated the advertisements or representations as set forth in the sub-paragraphs and identified as (A) to (F), inclusive.

These Respondents jointly and severally deny the statements as set forth and identified as sub-paragraphs (1) to (7), inclusive.

These Respondents jointly and severally deny that any or all of the said representations disseminated or used in advertising the product herein was misleading in any respect, and further deny that the advertisements used in connection with the sale of Imdrin were false or misleading in any respect.

These Respondents jointly and severally deny that the advertisements that were disseminated and used in connection with the sale of their product Imdrin constituted "false advertisements" as that term is defined in the Federal

Trade Commission Act. On the contrary, these Respondents jointly and severally state that the representations that were made and disseminated by them regarding their product were true; and deny that the acts and practices complained of were unfair methods of competition, or unfair, false, or deceptive, or in any way in violation of the Federal Trade Commission Act.

Paragraph Five. In answer to Paragraph Five of said complaint, these Respondents jointly and severally deny that the advertisements disseminated and used in connection with the sale of the product Imdrin has had the capacity and tendency to mislead and deceive, or has misled and deceived, any portion of the purchasing public.

These Respondents, jointly and severally, state that the representations and statements contained in their advertisements were true, and that no purchasers were led to make purchases of the product Imdrin through any false representation or representations whatsoever.

Paragraph Six. In answer to Paragraph Six of the said complaint, these Respondents jointly and severally deny that any of their acts and practices were to the prejudice and injury of the public, and further deny that any
13 of their acts or representations used in connection with the sale of their product constituted unfair or deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

Wherefore, these Respondents pray that the Complaint filed herein against them be dismissed.

Rhodes Pharmacal Company, Inc.,
J. Sanford Rose,
Individually and as officer of Rhodes Pharmacal Company, Inc.,

Jerome H. Rose,
Individually and as officer of Rhodes Pharmacal Company, Inc.,

By Frank E. & Arthur Gettleman and James Goding,
Their Attorneys.
10 South La Salle Street,
Chicago 3, Illinois,
RAndolph 6-6726.

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14 UNITED STATES OF AMERICA.

BEFORE FEDERAL TRADE COMMISSION.

Commissioners:

James M. Mead, Chairman,
William A. Ayres,
Lowell B. Mason,
John Carson.

* * (Caption—5691) * *

ORDER APPOINTING TRIAL EXAMINER AND FIXING TIME AND PLACE FOR TAKING TESTIMONY.

This matter being at issue and ready for the taking of testimony and the receipt of evidence, and pursuant to authority vested in the Federal Trade Commission,

It Is Ordered that Abner E. Lipscomb, a Trial Examiner of this Commission, be and he hereby is designated and appointed to take testimony and receive evidence in this proceeding and to perform all other duties authorized by law;

It Is Further Ordered that the taking of testimony and the receipt of evidence begin on Wednesday, July 5, 1950, at two o'clock in the afternoon of that day (Eastern Daylight Saving Time), in Room 500, 45 Broadway, New York, New York.

Upon completion of the taking of testimony and receipt of evidence in support of the allegations of the complaint, the Trial Examiner is directed to proceed immediately to take testimony and evidence on behalf of the respondents. The Trial Examiner will then close the taking of testimony and evidence and, after all intervening procedure as required by law, will close the case and make and serve on the parties at issue an initial decision which shall include findings and conclusions, as well as the reasons or basis therefor, upon all the material issues of fact, law, or discretion presented on the record, and an appropriate order; all of which shall become a part of the record in said proceeding.

By the Commission.

D. C. Daniel,
Secretary.

(Seal)

Issued: June 23, 1950.

15 UNITED STATES OF AMERICA.

BEFORE FEDERAL TRADE COMMISSION.

* * (Caption—5691) * *

NOTICE OF CANCELLATION AND RESETTING OF HEARING.

(Received June 28, 1950, Fed. Trade Com., Secretary.)

Pursuant to request of counsel in support of the complaint, by reason of inability of expert witnesses to appear on that date, the hearing scheduled in the above-entitled case for July 5, 1950, is hereby cancelled.

Notice is hereby given that a hearing will be held in this case at 10:00 A. M., E. D. T., September 27, 1950, in Room 500, 45 Broadway, New York 6, New York.

Abner E. Lipscomb,
Trial Examiner.

June 28, 1950.

16 UNITED STATES OF AMERICA.

BEFORE FEDERAL TRADE COMMISSION.

* * (Caption—5691) * *

NOTICE OF CANCELLATION AND RESETTING OF HEARING.

(Received Oct. 12, 1950, Fed. Trade Com., Secretary.)

In accordance with notice previously given on the record at the hearing held at New York, New York, on September 28, 1950, a hearing will be held in this proceeding beginning at 10:00 A. M., CST, on November 20, 1950, in Room 802-A, New Post Office Building, 433 West Van Buren Street, Chicago, Illinois.

Abner E. Lipscomb,
Trial Examiner.

October 12, 1950.

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17 UNITED STATES OF AMERICA.

BEFORE FEDERAL TRADE COMMISSION.

* * (Caption—5691) * *

NOTICE OF HEARING.

(Received Jan. 15, 1951, Fed. Trade Com., Secretary.)

Pursuant to previous agreement between counsel at the hearing held in Chicago, Illinois, on November 21, 1950, notice is hereby given you that a hearing will be held in the above-entitled proceeding beginning at 10:00 A. M., E. S. T., January 22, 1951, in Room 117, Old Post Office Building, Cleveland, Ohio.

Notice is also given you that an additional hearing will be held in this proceeding beginning at 10:00 A. M., C. S. T., January 25, 1951, in Room 802-A, New Post Office Building, Chicago, Illinois.

Abner E. Lipscomb,
Trial Examiner.

January 15, 1951.

18 UNITED STATES OF AMERICA.

BEFORE FEDERAL TRADE COMMISSION.

* * (Caption—5691) * *

NOTICE OF CHANGE IN HEARING DATE.

(Received Feb. 9, 1951, Fed. Trade Com., Secretary.)

Notice is hereby given you that the hearing heretofore set on the record to be held in Room 802-A, New Post Office Building, Chicago, Illinois, on February 14, 1951, will be held in the same place, beginning at 9:00 A. M., C. S. T., on February 15, 1951.

Abner E. Lipscomb,
Trial Examiner.

February 9, 1951.

19 UNITED STATES OF AMERICA.

BEFORE FEDERAL TRADE COMMISSION.

* * (Caption—5691) * *

NOTICE SETTING TIME WITHIN WHICH HEARING MAY BE REQUESTED.

(Received Feb. 21, 1951, Fed. Trade Com., Secretary.)

Pursuant to notice given on the record at a hearing held in Chicago, Illinois, on February 16, 1951, in the above-entitled case, notice is hereby given you that March 16, 1951, is hereby fixed as the time on or before which respondent shall notify the trial examiner of the places at which it is desired to hold hearings and the approximate length of time which will be required to present direct testimony on behalf of respondents, with suggested dates for such hearings.

Abner E. Lipscomb,
Trial Examiner.

February 21, 1951.

20 UNITED STATES OF AMERICA.

BEFORE FEDERAL TRADE COMMISSION.

* * (Caption—5691) * *

NOTICE OF HEARING.

(Received Mar. 23, 1951, Fed. Trade Com., Secretary.)

Pursuant to agreement between counsel, notice is hereby given you that a hearing will be held in the above-entitled proceeding, beginning at 10:00 A. M., CST, on April 4, 1951, in Room 802-A, New Post Office Building, Chicago, Illinois.

Abner E. Lipscomb,
Trial Examiner.

March 22, 1951.

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21 UNITED STATES OF AMERICA.

BEFORE FEDERAL TRADE COMMISSION.

* * (Caption—5691) * *

NOTICE OF HEARINGS.

(Received Apr. 20, 1951, Fed. Trade Com., Secretary.)

Pursuant to agreement between counsel, notice is hereby given you that hearings in the above-entitled proceeding will be held as follows:

Date	Beginning	Place
April 25, 1951	2:00 P.M., EST	Room 500, 45 Broadway, New York, New York.
May 22, 1951	10:00 A.M. (City time)	Room 117, Federal Building, Cleveland, Ohio.
May 23, 1951	10:00 A.M. (City time)	Room 802-A, New Post Office Building, Chicago, Illinois.

Abner E. Lipscomb,
Trial Examiner.

April 20, 1951.

22 UNITED STATES OF AMERICA.

BEFORE FEDERAL TRADE COMMISSION.

* * (Caption—5691) * *

NOTICE OF CHANGE IN HEARING LOCATION.

(Received May 10, 1951, Fed. Trade Com., Secretary.)

Notice is hereby given you that, pursuant to request of counsel for the respondent, the hearing heretofore set in the above-entitled proceeding to be held in Cleveland, Ohio, on May 22, 1951, will be held as follows:

Date	Beginning	Place
May 22, 1951	10:00 A.M., City Time	Room 802-A, New Post Office Building, Chicago, Illinois.

Abner E. Lipscomb,
Trial Examiner.

May 10, 1951.

23 UNITED STATES OF AMERICA.

BEFORE FEDERAL TRADE COMMISSION.

* * (Caption—5691) * *

NOTICE OF HEARING.

(Received June 14, 1951, Fed. Trade Com., Secretary.)

Pursuant to request of counsel for the respondents, notice is hereby given you that a hearing will be held in the above-entitled proceeding, beginning at 10:00 A. M., EDST, June 27, 1951, in Court Room 1153, 201 Varick Street, New York, New York.

Abner E. Lipscomb,
Trial Examiner.

June 14, 1951.

24 UNITED STATES OF AMERICA.

BEFORE FEDERAL TRADE COMMISSION.

* * (Caption—5691) * *

NOTICE OF HEARING.

(Received Sept. 5, 1951, Fed. Trade Com., Secretary.)

Pursuant to agreement between counsel, notice is hereby given you that a hearing will be held in the above-entitled proceeding, beginning at 10:00 A. M., CST, September 18, 1951, in the Civil Service Room, Post Office Building, Ann Arbor, Michigan.

Abner E. Lipscomb,
Trial Examiner.

September 5, 1951.

25 UNITED STATES OF AMERICA.

BEFORE FEDERAL TRADE COMMISSION.

* * (Caption—5691) * *

NOTICE OF HEARING.

(Received Sept. 27, 1951, Fed. Trade Com., Secretary.)

Pursuant to agreement between counsel, notice is hereby given you that a hearing will be held in the above-entitled proceeding, beginning at 2:00 P. M., E. S. T., October 16, 1951, in Room 209, Post Office Building, Buffalo, New York.

Abner E. Lipscomb,
Trial Examiner.

September 27, 1951.

OFFICIAL REPORT OF PROCEEDINGS.

(Filed Jan. 2, 1953. Kenneth J. Carrick, Clerk.)

BEFORE THE FEDERAL TRADE COMMISSION.

* * (Caption—5691) * *

1 Room 500, 45 Broadway,
New York City, New York,
September 27, 1950.

Met, pursuant to notice, at 10:00 a. m.

Before:

Abner E. Lipscomb, Trial Examiner.

Appearances:

Joseph Callaway, Attorney for Federal Trade Commission.

Frank E. Gettleman, Attorney for respondent Jerome H. Rose (10 S. La Salle Street, Chicago, Illinois).

James B. Goding, Attorney for respondent J. Sanford Rose (653 Washington Building, Washington, D. C.).

Edward Brodkey, Attorney for respondent Rhodes Pharmacal Company, Inc. (10 S. La Salle Street, Chicago, Illinois).

2 PROCEEDINGS.

Trial Examiner Lipscomb: The hearing will come to order.

The record will show this is the initial hearing in Docket No. 5691, Federal Trade Commission *vs.* Rhodes Pharmacal Company, Inc., J. Sanford Rose and Jerome H. Rose, individually and as officers of the Rhodes Pharmacal Company, Inc.

The attorney for the complaint may proceed in this case.

Mr. Callaway: If your Honor please, this case involves

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the alleged dissemination of false advertising for a preparation called "Imdrin".

The complaint says that the advertising disseminated, among other things, has represented that the preparation taken as directed is an adequate, effective and reliable treatment for any kinds of rheumatism, or arthritis, and the symptoms thereof.

Now, the answer admits that the respondents are engaged in the business of selling the preparation Imdrin in interstate commerce, and disseminating advertising in interstate commerce in furtherance of that purpose.

The answer also admits that the formula and directions for use, as set out in the complaint, are true.

The import of the advertising, as described in the
3 complaint, is denied, and it is also denied that the advertising is false.

Now, as I understand it, that leaves only two issues to be litigated: No. 1, what is the advertising respondents disseminated; was that advertising false or deceptive.

Now, I want, at this time, to introduce into evidence Respondents' advertising, and following that I want to call expert witnesses to show that the advertising is false and deceptive.

I just thought I would make that statement to outline the procedure that I would follow at this time.

Now, I want to call as my first witness Mr. Jerome H. Rose.

JEROME H. ROSE was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

Direct Examination by Mr. Callaway.

Q. Mr. Rose, where do you live?
A. New York City.
Q. What place in New York?
A. 975 Fifth Avenue.
Q. And what is your occupation?
A. Vice-President of Rhodes Pharmacal Company.
4 Q. How long have you been in that capacity with the Rhodes Pharmacal Company?
A. Since the inception of the company in question, since 1945, I believe.

Q. Now, last December, through an exchange of correspondence with your counsel, Mr. Gettleman, I understood that you had checked on the advertising that I am now going to show you and that you can verify its publication.

Mr. Callaway: Will you mark these.

Trial Examiner Lipscomb: The reporter will mark for identification the papers handed to him.

(The papers referred to were marked Commission's Exhibits 1 to 7 for identification.)

By Mr. Callaway:

Q. Mr. Rhodes, I show you Commission's Exhibit 1 through 7 for identification, which were attached as exhibits Q through W to an affidavit of Mr. Nelson W. McMillan, which I believe you have seen.

I want to ask you if that—they are radio continuities, I believe—I want to ask you if those radio continuities were broadcast over all of the stations mentioned in the complaint subsequent to September 1, 1948?

A. I believe my brother can tell you more directly than I can with regard to the radio continuity.

Q. You would rather that he would identify that?

A. I would not be in a position to identify it, Mr. Callaway.

Mr. Callaway: All right.

Mr. Gettleman: That is radio that you are talking about?

The Witness: Yes, that is radio.

Mr. Callaway: I want to excuse this witness for the present and introduce Mr. J. Sanford Rose.

(Witness excused.)

J. SANFORD ROSE was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

Direct Examination by Mr. Callaway.

Q. Your name is J. Sanford Rose?
A. Yes, sir.
Q. Where do you live, Mr. Rose?
A. 1540 Lake Shore Drive, Chicago, Illinois.
Q. And what is your business?

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A. I am President of the Rhodes Pharmacal Company.
Q. How long have you been President?
A. Since its inception.
Q. That is the Rhodes Pharmacal Company that is one of the respondents in this case?
6 A. Yes, sir.
Q. I show you Commission's Exhibits 1 through 7 and ask you if that—if those are not radio continuities or copies of radio continuities advertising of respondent, and if those radio broadcasts were not produced and broadcast all over the radio stations mentioned in the complaint subsequent to September 1, 1948. Those radio stations mentioned in the complaint were:
WJJD—Chicago, Illinois
WHN—New York, New York
WPIX—New York, New York
WOV—New York, New York
KWTO—Springfield, Missouri
KWKH—Shreveport, Louisiana; and
WWVA—Wheeling, West Virginia?
A. Yes, I can identify these.
Mr. Callaway: I ask that they be admitted into evidence, your Honor, as Commission's Exhibits.
Mr. Gettleman: There is no objection.
Trial Examiner Lipscomb: The tendered exhibits will be received in evidence and marked as Commission's Exhibits 1 through 7.
(The papers referred to, heretofore marked for identification as COMMISSION'S EXHIBITS 1 through 7, were received in evidence.)
7 Mr. Callaway: I take it, Mr. Gettleman, that it will be admitted that all of these radio stations were powerful enough and did send their messages across state lines?
Mr. Gettleman: That is right.

By Mr. Callaway:

Q. Now, I understand the rest of the advertising is newspaper advertising and pamphlets. Would you be in a better position to identify that than your brother, or would you not?
A. Partially. I think my brother had more to do with pamphlets and some of the original newspaper advertising, as I was away at the original inception.
Q. Now, would you—

A. I could look them over and probably tell you.

Q. Now, would you—

Mr. Callaway: I might say, at this time, your Honor, that as of December 1949 I sent a letter to Mr. Gettleman, who is counsel of record for this respondent, and these radio advertisements, and all of the advertising I am going to introduce into evidence, was set forth in that letter, and I asked in that letter that the respondent be ready to identify the advertising as being the advertising of respondent and where it was disseminated, and that if they could not do that I wanted to know so now, at the time I wrote that letter, and I still want to know so since that time, so that I could bring in other proof of them.

8 I got a letter back from Mr. Gettleman on December 13, 1949. It says this:

"In reply to your letter dated December 9, 1949, in which you enclose the affidavits of Abner H. Barker and Nelson W. McMillan, please be advised that Nelson H. Rose of the Rhodes Pharmacal Company examined the facts therein and they all appear to be in good order. He will be perfectly willing to identify them at the hearing."

So now, if there is going to be any trouble about identifying these—

Mr. Gettleman: I think you are unduly apprehensive because there will not be any.

However, the specific matter at hand, as can be readily seen, one of these respondents can identify some and another respondent perhaps the others.

Mr. Brodkey: That is right.

Mr. Gettleman: But there will not be any question.

The Witness: I do know for a fact that I could not identify the pamphlets.

Mr. Callaway: Will you mark this.

(The paper referred to was marked Commission's Exhibit 8 for identification.)

By Mr. Callaway:

Q. Mr. Rhodes, I show you Commission's Exhibit

9 No. 8 for identification, which I have just detached from affidavit of Mr. Abner H. Barker, and I ask if that is an advertisement of respondent that was published in the Syracuse, New York, "Herald Journal" on February 17, 1949, and in the Rochester, New York "Times Union" on January 27, 1949?

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A. It apparently was.

Mr. Callaway: I ask that it be admitted in evidence.

Mr. Gettleman: No objection.

Mr. Brodkey: No objection.

Trial Examiner Lipscomb: It will be received in evidence and marked as Commission's Exhibit 8.

(The paper referred to, heretofore marked for identification as COMMISSION'S EXHIBIT NO. 8, was received in evidence.)

By Mr. Callaway:

Q. Now, Mr. Rose, in some of this newspaper advertising, if I understand it correctly, you had an arrangement with local dealers whereby the dealers' names would appear in these advertisements and your concern would bear half the cost of the publication, is that correct?

A. Yes, that is.

Mr. Callaway: Will you mark this.

(The paper referred to was marked Commission's Exhibit 9 for identification.)

10 By Mr. Callaway:

Q. Mr. Rose, I show you Commission's Exhibit No. 9 for identification and I ask you if that is a copy of an advertisement of respondent's published in the Washington, D. C. "Times Herald" on April 18, 1949; in the Bluefield, West Virginia "Daily Telegraph" on April 1, 1949.

A. Mr. Callaway, on this style of advertising, which was my brother's thought, he would know more about it.

I was concerned with the large ads, at that time. It was at his instigation that we went into this style of advertising, so he would be best fitted to identify this style.

Mr. Callaway: Will you mark this.

(The paper referred to was marked Commission's Exhibit 10 for identification.)

By Mr. Callaway:

Q. Would the same apply to Commission's Exhibit No. 10 for identification, which I hand you?

A. Yes, this is what we would style as "Reader" style, and did differ from our large display type advertising.

Mr. Callaway: Will you mark this for identification.

(The paper referred to was marked Commission's Exhibit 11 for identification.)

Mr. Callaway: And will you mark this.

(The paper referred to was marked Commission's
11 Exhibit No. 12 for identification.)

By Mr. Callaway:

Q. Now, the same would also apply to Commission's Exhibit No. 11, which I show you, and Commission's Exhibit No. 12, which I show you?

A. Well, this Exhibit No. 12 I can identify.

Q. I want to ask you if Commission's Exhibit No. 12 is not an advertisement of the respondent published in Baltimore, Maryland "American" on May 7, 1949?

A. I know it is one of our ads, Mr. Callaway; as for the newspaper and date, it is hard for me to identify it as to any particular period. I do know that we ran them throughout the country.

Q. You ran them in a number of newspapers?

A. Right.

Q. Now, subsequent to September 1, 1948?

A. Yes.

Mr. Callaway: I ask that Commission's Exhibit No. 12 be admitted in evidence?

Mr. Gettleman: No objection.

Mr. Brodkey: No objection.

Trial Examiner Lipscomb: The tendered instrument be received in evidence as Commission's Exhibit No. 12.

(The paper referred to, heretofore marked for identification COMMISSION'S EXHIBIT NO. 12, was re-
12 ceived in evidence.)

By Mr. Callaway:

Q. Now, by the way, still referring to Commission's Exhibit No. 12, I call your attention to the coupon down there on the bottom part of it, that which I have shown you. The actual paper was furnished to us by your newspaper advertiser, or the men handling the newspaper advertising. Does each publication where that appeared,—in each publication where that appeared, it had a particular dealer's name in it, did it not?

A. Yes, sir.

Q. In the city in which it was being run?

A. Yes, sir.

Mr. Callaway: Mark this for identification.

(The paper referred to was marked Commission's Exhibit No. 13 for identification.)

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By Mr. Callaway:

Q. I show you Commission's Exhibit No. 13 for identification and ask you if that is an advertisement of respondent published in Washington, D. C., "Evening Star," April 19th and April 26th, 1949?

A. It was one of our ads.

Q. And it was published in various newspapers over the country, is that right?

A. Yes.

13 Q. Subsequent to September 1st, 1948?

A. That is right.

Q. Is that right?

A. Yes, that is right.

Mr. Gettleman: If I may say a few words, in order to be helpful, Mr. Callaway—

Mr. Callaway: Yes, sir.

Mr. Gettleman: We can stipulate—I do not believe the witness can remember each and every publication that these ads ran, but we will gladly stipulate that these ads were run extensively throughout the United States and would include the cities that you have.

Mr. Callaway: All right, that is good enough.

Mr. Gettleman: That will simplify it.

Mr. Callaway: Very well.

Mark this for identification.

(The paper referred to was marked Commission's Exhibit No. 14 for identification.)

By Mr. Callaway:

Q. I also show you Commission's Exhibit No. 14 for identification and do I understand that that was run in a number of cities as an advertisement of respondent subsequent to September 1st, 1948, including Washington, D. C. "Times Herald"; South Bend, Indiana "Tribune";

Shreveport, Louisiana "Times"; Baltimore, Mary-

14 land "Post"; Syracuse, New York "American"; St. Louis, Missouri "Globe Democrat"; Clarksburg, West Virginia "Exponent-Telegram." We will leave off the dates, since Mr. Gettleman makes the suggestion which he has made.

A. No, on this particular ad I think it only ran in New York City.

Q. That ran in New York City newspapers?

A. Yes, sir.

Q. Now, subsequent to the dates that I mentioned?
A. Yes, sir.
Mr. Callaway: I ask that that be admitted.
Mr. Gettleman: No objection.
Mr. Brodkey: No objection.
Trial Examiner Lipscomb: Mr. Callaway, you did not formally ask that 13 be received in evidence.
Mr. Callaway: Yes, sir, I intended to do that.
Mr. Gettleman: No objection to 13.
Mr. Brodkey: That is right.
Mr. Callaway: And I want to ask that No. 14 be now admitted.
Trial Examiner Lipscomb: Exhibits 13 and 14 are received in evidence as COMMISSION'S EXHIBITS 13 and 14 respectively.
(The papers referred to, heretofore marked for identification as Commission's Exhibits Nos. 13 and 14, were
15 received in evidence.)
Mr. Callaway: Will you mark this, please.
(The paper referred to was marked Commission's Exhibit No. 15 for identification.)

By Mr. Callaway:

Q. I show you Commission's Exhibit No. 15 for identification and ask you if that is not an advertisement of respondent?
I was wrong a minute ago in what I said, that is the advertisement that was published in the Washington, D. C. "Times Herald"; South Bend, Indiana "Tribune"; Shreveport, Louisiana "Times"; Baltimore, Maryland "News-Post"; Syracuse, New York "Herald-American"; and St. Louis "Globe Democrat"; and the Clarksburg, West Virginia "Exponent-Telegram"?
A. Yes, sir.
Q. Is that correct?
A. That is right.
Mr. Callaway: I ask that that, Commission's Exhibit 15 for identification, be admitted in evidence.
Mr. Gettleman: No objection.
Mr. Brodkey: No objection.
Trial Examiner Lipscomb: The tendered exhibit is received in evidence as Commission's Exhibit No. 15.
(The paper referred to, heretofore marked for identification as COMMISSION'S EXHIBIT NO. 15, was received in evidence.)

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16 Mr. Callaway: Will you mark this.

(The paper referred to was marked Commission's Exhibit No. 16 for identification.)

By Mr. Callaway:

Q. I show you Commission's Exhibit No. 16 for identification and ask if that is an advertisement of respondent published in various newspapers over the country subsequent to September 1, 1948, including the Washington, D. C. "Daily News"; the Rochester, New York "Sun"?

A. Yes, sir.

Q. Now, in that light, the other one that I mentioned to you, in each newspaper that it was published in, it had the dealer's name of that particular town?

A. Yes.

Q. And that was in the coupon down in the lower right-hand corner, was it not?

A. Yes, sir.

Mr. Callaway: I offer that in evidence.

Mr. Gettleman: No objection.

Mr. Brodkey: No objection similarly.

Trial Examiner Lipscomb: The instrument will be received in evidence as Commission's Exhibit No. 16.

(The paper referred to, heretofore marked for identification as COMMISSION'S EXHIBIT NO. 16, was received in evidence.)

17 Mr. Callaway: Will you mark this for identification.

(The paper referred to was marked Commission's Exhibit No. 17 for identification.)

By Mr. Callaway:

Q. Mr. Rose, I show you Commission's Exhibit No. 17 for identification which seems to be the same as the last mentioned advertisement, except that it does not contain the statement that the pictures shown therein were posed by professional models. I want to ask if this is an advertisement of respondent's published in Boston, Massachusetts, "Daily Record" of March 15, 1949?

A. It appears to be so. It appears that the newspaper made an error in cutting out the bottom of the signature over there where we have the line posed by professional models. We used the same mats when we sent them out.

Q. You did pay for that advertisement, though, did you not?

A. Yes, sir.

Mr. Callaway: I offer it in evidence.

Mr. Gettleman: No objection.

Mr. Brodkey: No objection.

Trial Examiner Lipscomb: The tendered advertisement is received in evidence as Commission's Exhibit No. 17.

(The paper referred to, heretofore marked for identification COMMISSION'S EXHIBIT NO. 17, was received in evidence.)

18 Mr. Callaway: Will you mark this, please.

(The paper referred to was marked Commission's Exhibit No. 18 for identification.)

By Mr. Callaway:

Q. I show you Commission's Exhibit No. 18 for identification, which seems to be similar to the last two mentioned, except for the arrangement on the page. I want to ask whether this is an advertisement of respondent published in the Louisville, Kentucky "Times" on March 11, 1949?

A. Yes, sir.

Mr. Callaway: I ask that it be received in evidence.

Mr. Gettleman: No objection.

Mr. Brodkey: No objection.

Trial Examiner Lipscomb: The tendered advertisement is received in evidence as Commission's Exhibit No. 18.

(The paper referred to, heretofore marked for identification COMMISSION'S EXHIBIT NO. 18, was received in evidence.)

Mr. Callaway: Will you mark this.

(The paper referred to was marked Commission's Exhibit No. 19 for identification.)

By Mr. Callaway:

Q. I show you Commission's Exhibit No. 19 for identification and ask if that is an advertisement of respond-

19 ent published in various newspapers over the United States subsequent to September 1, 1949, among them being the Washington, D. C. "Times-Herald"; St. Paul, Minneapolis "Pioneer Press"; the Oakland, California "Tribune"; the New Orleans, Louisiana "States"; the South Bend, Indiana "Tribune"; the St. Paul, Minneapolis "Sunday Pioneer"?

A. Yes, sir.

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Mr. Callaway: I ask that it be received.
Mr. Gettleman: No objection.
Mr. Brodkey: No objection.
Trial Examiner Lipscomb: Tendered advertisement is received in evidence as Commission's Exhibit No. 19.

(The paper referred to, heretofore marked COMMISSION'S EXHIBIT NO. 19 for identification, was received in evidence.)

Mr. Callaway: Will you mark this.

(The paper referred to was marked Commission's Exhibit No. 20 for identification.)

By Mr. Callaway:

Q. I show you Commission's Exhibit 20 for identification and ask if that is an advertisement of respondent that appeared in the newspaper shown at the top. Would you read it, please, together with the date?

A. The date does not show on this side. Would you like the date it was received here? It is January 10th.

Q. It shows that it was published in the St. Paul "Pioneer Press" on November 14, 1948, is that right?

A. Yes, sir.

Mr. Callaway: I ask that that be received in evidence.
Mr. Gettleman: No objection.
Mr. Brodkey: No objection.
Trial Examiner Lipscomb: The instrument is received in evidence as Commission's Exhibit No. 20.

(The paper referred to, heretofore marked for identification COMMISSION'S EXHIBIT 20, was received in evidence.)

Mr. Callaway: Will you mark this.

(The paper referred to was marked Commission's Exhibit No. 21 for identification.)

By Mr. Callaway:

Q. I show you Commission's Exhibit No. 21 for identification and ask if that advertisement is an advertisement of respondent published in the New York "Sunday News" for June 16, 1949, and in the same paper for January 30, 1949, and February 27, 1949?

A. My brother would have to identify this one. This New York advertising, I did not have much to do with it. I would not remember this.

Mr. Callaway: Will you mark this.

21 (The paper referred to was marked Commission's Exhibit No. 22 for identification.)

By Mr. Callaway:

Q. I take it this is another one, No. 22, that your brother would have to identify, is that correct?

A. I want to read it first.

Q. Can you identify it?

A. I want to read it.

Q. Very well.

Mr. Callaway: Mr. Gettleman, pardon me, I haven't shown you any of these things. I take it you are personally familiar with these?

Mr. Gettleman: That is perfectly all right.

A. I remember this was not—this was an ad that was prepared by another agency prior to—

Q. I want to ask you if that was not an advertisement of the respondent published in the Cedar Rapids, Iowa "Gazette" of March 13, 1949?

A. Yes, it is.

Mr. Callaway: I ask that that be admitted in evidence.

Mr. Gettleman: That is No. 22?

Mr. Callaway: Yes.

Mr. Gettleman: No objection.

Mr. Brodkey: No objection.

22 Trial Examiner Lipscomb: The tendered advertisement is received in evidence as Commission's Exhibit No. 22.

(The paper referred to, heretofore marked for identification COMMISSION'S EXHIBIT NO. 22, was received in evidence.)

Mr. Callaway: Will you mark this.

(The paper referred to was marked Commission's Exhibit No. 23 for identification.)

By Mr. Callaway:

Q. I show you Commission's Exhibit No. 23 for identification and I am going to ask you if that was an advertisement of respondent published in the Springfield, Illinois "State Journal" on January 21, 1949?

A. May I say, at this time, that it was apparently our mat that was used, but the person who ran the ad, which was Thrifty Drug Stores of Illinois, changed the ad around. This is not a standard ad of ours.

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Q. But you paid for it, didn't you?

A. Apparently, I would have to check our bookkeeping records.

Mr. Callaway: I ask that this be received in evidence.

Mr. Brodkey: May I ask, Mr. Callaway, if you rely particularly upon this ad for any purpose we do not know?

Mr. Callaway: Well, I picked that ad out, among others. I have at least 100 others, you understand, and I
23 picked that out, among those, because it was different.

Mr. Brodkey: You did select it on account of its difference?

Trial Examiner Lipscomb: Off the record.

(Discussion off the record.)

The Witness: I want to go on record as saying that those changes were not of our doing.

Mr. Brodkey: We will ask you a question concerning that on cross-examination.

Mr. Callaway: I offer it in evidence.

Mr. Gettleman: No objection.

Mr. Brodkey: No objection, but we will want to ask some questions on cross-examination.

Trial Examiner Lipscomb: The tendered advertisement is received in evidence as Commission's Exhibit No. 23.

(The paper referred to, heretofore marked for identification COMMISSION'S EXHIBIT NO. 23, was received in evidence.)

Mr. Callaway: Will you mark these, each one separately.

(The papers referred to were marked Commission's Exhibits 24 through 30, respectively, for identification.)

By Mr. Callaway:

Q. Mr. Rose, I show you Commission's Exhibits Nos. 24 through 30 for identification.

24 A. This is in my brother's department.

Q. You would not be able to identify it?

A. Well—

Q. They identify themselves, for that matter. The dates and publications are on there. It is in the Chicago "Tribune".

A. This was that style that is in my brother's department. It is my brother's fort.

Q. Now, will you just lay that to one side, all of those.

A. I am looking through them.

Here is one that I can identify, 27.

Mr. Brodkey: Exhibit No. 27?

The Witness: Yes, No. 27.

A. And I can also identify this one, called 28. I can identify that, and I can identify 29.

Q. How about 30?

Mr. Brodkey: Did you say 30?

Mr. Callaway: Yes, Exhibit 30.

A. Yes, and 30 also.

Q. I understand, then, that you can identify Commission's Exhibits 27, 28, 29 and 30 as having appeared in the Chicago "Tribune" on the dates shown in the headline of these exhibits?

A. Yes.

Mr. Callaway: I ask that they be admitted in evidence.

Mr. Brodkey: No objection.

25 Mr. Gettleman: No objection.

Trial Examiner Lipscomb: The tendered documents, Commission's Exhibits 27, 28, 29 and 30 for identification are received in evidence.

(The papers referred to, heretofore marked for identification as COMMISSION'S EXHIBITS NOS. 27, 28, 29 and 30, were received in evidence.)

Mr. Callaway: Mark this.

(The paper referred to was marked Commission's Exhibit No. 31 for identification.)

By Mr. Callaway:

Q. Now, I show you Commission's Exhibit No. 31 for identification. That is a pamphlet or leaflet of respondent's advertising, is it not?

A. Yes, this could also be better identified by my brother.

Mr. Callaway: All right.

I believe I will excuse Mr. J. Sanford Rose at this time.

Mr. Brodkey: May we cross-examine on this?

Mr. Callaway: Yes.

Cross-Examination by Mr. Brodkey.

Q. Mr. Rose, do you appear here under Government subpoena?

A. Government subpoena?

Q. Is that right?

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26 A. Yes, sir.

Q. And with respect to the identification of these several exhibits, I call your attention particularly to Government's Exhibit No. 17. That was the one in which I believe you stated that there had been a change to this extent; that there had been a deletion by someone of a phrase which did appear in the original to the effect that it had been posed by professional models?

A. Yes.

Q. Is that correct?

A. Yes, that is so.

Q. Do you know who made that change or deletion?

Mr. Callaway: I object to that testimony. Just a minute. I object to that testimony.

Mr. Brodkey: It may be that he does not know.

Mr. Callaway: I object to that line of questioning for the simple reason that he admitted that the respondent paid for this advertisement and they got the benefit of it. What the gentleman now is questioning him about is the intention and that does not have any bearing on Federal Trade Commission cases.

The Witness: May I say that, when I said we paid for the ad, it is highly possible that our agency had received a credit of some kind from the newspaper running it because of their error. That is very common and we do
27 receive many credits from them, from many newspapers because of errors in the running of our advertising.

By Mr. Brodkey:

Q. Then you cannot be sure that you paid for it, is that right?

A. Our method is payment and then receiving credit later. When I say we paid, I feel quite certain that the original bill was paid, but also, highly possible, that we received a credit later from the newspaper making the error.

Q. As far as you know, that—

A. That is determined by our checkers, who check all advertising, and wherever they catch a mistake we then go to the newspaper for—to rectify same, which is usually done in the form of a credit.

Q. As far as you know, Mr. Rose, that phrase "Posed by"—

Mr. Callaway: Just a minute. That is not cross-examination. That is a very leading question. I object to it.

Mr. Brodkey: Being cross-examination I take it that it can be leading in accordance with the rules of evidence.

Mr. Callaway: It is his witness, your Honor, in this sense that he is a hostile witness to the Commission and he is one of the respondents and, therefore, the counsel cannot ask him leading questions.

Trial Examiner Lipscomb: I think counsel—both
28 counsel, can ask leading questions.

Mr. Brodkey: Certainly we do not mean to impose in any respect.

By Mr. Brodkey:

Q. Mr. Rose, so far as you know, and only so far as you personally know, that phrase "Posed by Professional Models" appears on all mats?

A. Yes. Those are our orders and all mats were made with that statement. If I may point out to you, or to the Examiner, on Exhibit 17, I can easily show you how this occurred.

Q. Would you look at—I do not know how important it is, but I show you this Exhibit No. 17 and ask you—

A. Yes.

Q. I ask you to explain, in your own way, how you think a change or deletion may have been made?

A. When the mats are sent to the newspapers, and you will find this mat practically identical, practically the identical mat in other exhibits, you will notice at the bottom "Posed by Professional Models".

When the mat is received by the newspaper instructions to run go along with it. They cut the blank space out to set in the names of the stores as they did here (indicating). This ad was apparently in the paper in Boston, and it says "At Liggett-Rexall drug stores throughout
29 New England and drug stores everywhere." This has been set in by the newspapers and to set this in it required them to cut out the matrix at that particular spot to set in that printing. It is apparent that, in cutting the same, they cut through "Posed by Professional Models." I am sure that you will find some on your other mats, and you will find that, in that position, and you can see where that mistake could take place.

Q. Now, with respect to Government's Exhibit No. 23,

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I believe you stated that that ad had been definitely changed by the Thrifty Drug Stores?

A. It is very obvious, yes.

Q. Could you state whether that change is material in any respect, as you view it?

A. From the standpoint of layout, no. If they made an exchange in the text, which I haven't had a chance to check—

Q. Well, please describe the nature of the change.

A. It is apparent that they took a large ad and made it into a smaller ad. In so doing, they chopped the ad apart using pictures that had been narrowed down in spots not originally intended, using figures in a different locale in the ad and changing paragraphs accordingly.

Q. Do you know whether or not they changed any of the textual material?

A. No, I have not had the opportunity to check that.

30 Q. Examine it?

A. That is right, to examine it.

Mr. Callaway: I wish you would examine it now. I thought you came here—one of you came here prepared to identify this ad.

Mr. Brodkey: With respect to that particular ad.

The Witness: I never seen that particular ad before, Mr. Callaway, and, in all honesty, I just could not identify the ad as one of our making.

Mr. Gettleman: I think you are right. Let him look at it now.

Mr. Callaway: Give it to him.

The Witness: At the same time, I would like to have another one of our ads of that style so that I can compare text. I could not remember everything in connection with the ad.

By Mr. Brodkey:

Q. Mr. Rose, I show you first Government's Exhibit No. 23, the ad in question. I should like to hand you, also, all the remaining ads which appear as Government exhibits and ask you to select from among them one which you consider of similar import to the one in question for the purposes of your comparison.

Mr. Gettleman: And then he can take some time to do it.

31 Mr. Callaway: We might have a five-minute recess, your Honor, while he is doing that.

Trial Examiner Lipscomb: There will be a five-minute recess.

(A short recess was taken.)

Trial Examiner Lipscomb: Let us proceed.

By Mr. Brodkey:

Q. Now, Mr. Rose, during the recess you examined the various Government exhibits to find one which, in your opinion, was sufficiently similar to Government's Exhibit No. 23 to form the basis for the comparison. Have you selected such an ad?

A. Yes.

Q. Which one is that?

A. I selected ad No. 19, Exhibit No. 19, which this apparently was cut out from. I am using as my basis of judgment the size of this figure which had to come from an ad of this size.

Q. And, having examined Government's Exhibit 19, and Government's Exhibit No. 23 together, did you find that there were differences?

A. Yes, I do.

Q. Could you direct my attention to those differences?

A. The first difference is here (indicating). Shall I read it?

32 Trial Examiner Lipscomb: Designate it.

A. "Imdrin has relieved pain and torture after years of suffering for many Altonians—"

Q. May I ask what you conceive Altonians to mean?

A. Well, Thrifty Drug Stores have a store in Alton, Illinois. Therefore I presume it to be a reference—

Q. To residents of Alton?

A. Yes, residents of Alton.

Q. Will you continue?

A. I found the following paragraph which I do not recognize as in our advertising. Shall I read it?

Q. Yes.

A. "Sometimes the bones about the joints get larger and this growth interferes with the function of the joint. This condition is known as osteoarthritis or bone rheumatism. Rheumatoid arthritis is an infection of the joints which fill with fluid; skin around them may be red, the joints themselves swollen and painful, still another form is specific infectious arthritis."

Q. Now, you do not find that in Exhibit 19?

A. No.

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I also do not find this one on the statement. I want to make sure of this. This has been added. "And somewhat calcified." That has been added to the statement in cases where joints are swollen.

33 I do not find "and somewhat calcified" in our ad.

Q. So it is your belief that these are additions made by someone and changes from the original mat as it was furnished by you?

A. It well may be.

Mr. Brodkey: I believe that is all.

Redirect Examination by Mr. Callaway.

Q. I want to ask you if your concern accepted the benefits from sales of Imdrin resulting from that advertisement?

A. If you mean we accepted an order from Thrifty Drug Stores, I am sure we have.

Q. You published no denial of those statements in any newspaper?

A. No.

Mr. Callaway: That is all.

Mr. Brodkey: One more question.

Recross Examination by Mr. Brodkey.

Q. Mr. Rose, will you tell us what your functions are in the corporate respondent here?

A. I am president of the corporation, acting in an administrative capacity, and I have given some particular emphasis in my duties to my advertising campaigns, Imdrin advertising campaign for the Rhodes Pharmacal Company.

34 Q. Would you have an immediate knowledge of the contents of each of these ads?

A. No. I think I would have a very excellent knowledge, but I would want to examine everything.

Mr. Callaway: Your Honor, that is—this line of cross-examination, and the answers thereto, are entirely contrary to the exchange—

Mr. Brodkey: Mr. Callaway, I withdraw the questions.

Mr. Callaway: All right.

Mr. Goding: You are referring to the last question?

Mr. Brodkey: Yes.

That is all.

Mr. Callaway: I guess I had better have Mr. Jerome H. Rose again.

(Witness excused.)

JEROME H. ROSE, resumed the stand and testified further as follows:

Direct Examination (Continued) by Mr. Callaway.

Q. Mr. Rose, I show you Commission's Exhibit 10 for identification, and I want to ask if that is an advertisement or copy of an advertisement of Respondent's published in the Seattle, Washington "Daily Times" on March 11, 1949, and the "Atlanta Constitution" on March 10, 1949, and the Indianapolis "News" on February 15, 1949, or approximately those dates?

35

A. Yes, sir.

Q. Now, I show you Commission's Exhibit 9. I want to ask if that—I show you also Commission's Exhibit 11, and Commission's Exhibit No. 21, all three numbers for identification, and ask you if those are not advertisements of respondent's published in various newspapers in the country subsequent to September 1, 1949?

I call to your attention the specific publication dates, if you desire, if you can identify them?

A. I can identify all three.

Q. And they were published as I stated?

A. That is right.

Q. Now, I show you Commission's Exhibit 31 for identification and ask you if that is an advertisement of respondent, a leaflet put out by respondent?

A. Yes, sir.

Q. How was that disseminated, Mr. Rose?

A. It is sent to the drug trade, generally, in fairly large quantities, and they pass them out to their customers who come into the stores in many different ways. Sometimes they wrap them in packages.

Q. And was that sent in pretty large quantities to all of your drug stores handling your products?

36

A. We used the pamphlet for a short period of time, more or less to test as to other—

Q. But during that period of time it was sent pretty well all over the United States, was it not?

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A. I would think so.

Q. Now, on these numbers that we have been talking about, there were some more, Commission's Exhibits 24, 25, and 26, which I believe Mr. J. Sanford Rose said he could not identify, I show you Commission's Exhibit 24, Commission's Exhibit 25, and Commission's Exhibit 26 for Identification, published in the Chicago Daily Tribune, and I am going to ask you if you can identify those as advertisements of the respondent?

A. Yes, sir.

Mr. Callaway: Now, your Honor, all of these that have not been admitted into evidence, I want to ask that they be admitted into evidence.

Mr. Gettleman: No objection.

Mr. Brodkey: No objection.

Trial Examiner Lipscomb: Commission's Exhibits Nos. 9, 10, 11, 21, 24, 25, 26 and 31 are received in evidence.

(The papers referred to, heretofore marked for identification as COMMISSION'S EXHIBITS NOS. 9, 10, 11, 21, 24, 25, 26, and 31, were received in evidence.)

37 By Mr. Callaway:

Q. Mr. Rose, I want to show you Commission's Exhibit 32, I believe it is. Is that a bottle of Imdrin tablets?

Mr. Callaway: I am not offering it for the tablets in there, but for the label.

By Mr. Callaway:

Q. That is the kind of label that your products bear, is it not?

A. Yes, sir.

Q. And they still bear that label?

A. Yes, sir.

Mr. Callaway: I offer that in evidence.

Mr. Gettleman: No objection.

Mr. Brodkey: No objection.

Trial Examiner Lipscomb: The tendered bottle and label are received in evidence as Commission's Exhibit No. 32.

Mr. Callaway: Since Exhibit No. 32 is only being offered for purposes of the label, it will be agreeable if a similar label unattached to any bottle is substituted for Exhibit No. 32.

(The paper referred to, heretofore marked for identification as COMMISSION'S EXHIBIT NO. 32, was received in evidence.)

By Mr. Callaway:

Q. Now, Mr. Rose, you are familiar with the com-
38 plaint in this case, I take it, aren't you?

A. Yes, sir.

Q. The complaint alleges, among other things, that these advertisements represented, or represent, contrary to the facts, that Imdrin, taken as directed, is an adequate, effective and reliable treatment for all kinds of arthritis and rheumatism, neuritis, sciatica, gout, neuralgia, fribrositis and bursitis, and the symptoms and manifestations thereof.

Now, the answer filed—you, I believe, are an individual respondent in this case?

A. Yes.

Q. The answer was a joint answer, and the answer is also your answer?

A. Yes.

Q. The answer denies those allegations of the complaint. You understand that, don't you?

A. Yes, sir.

Q. Mr. Rose, do you honestly think that the respondent's preparation will do what it is advertised to do?

Mr. Brodkey: I object to that.

Mr. Goding: I object to that.

Mr. Callaway: Why?

Mr. Goding: Because his intentions, as you already pointed out, the intention of good faith is entirely irrelevant.

39 Any question of state of mind of this respondent, or the other individual respondent, is entirely irrelevant. The point is whether or not he honestly believes, parenthetically, I might interpolate here, I am sure he does, is entirely irrelevant.

Mr. Callaway: It is not entirely irrelevant, because, if he does not honestly believe it, this lawsuit may go out of issue.

Mr. Brodkey: I did not recognize the matter of intent being presented among any of them, either directly or by implication. I think Mr. Callaway to all intents and purposes correctly stated that the issues here were what representations were made and are they true or false.

Mr. Goding: The sole issue, if I may take on from that point, is simply, objectively, whether these representations first are what the Commission claims they mean, and, secondly, whether they are, in fact, true or false. What he honestly believes is entirely irrelevant.

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I would like to say, at this point, that I am satisfied that the answer here will be in the affirmative, obviously.

Mr. Callaway: Then what are you objecting for?

Mr. Goding: My objection goes to any needless line of inquiry along that line.

I do not seek to be needlessly technical, but in
40 order that we understand at the very threshold of this issue just what the issues are and how they should be defined, I submit the question to your Honor for an unequivocal ruling.

Trial Examiner Lipscomb: The respondent, as I understand, has manufactured this preparation and has made the representations in the advertisements, and who better in the world should know whether it is true or false than he.

Mr. Goding: That is true.

Trial Examiner Lipscomb: And he has asked him if he thinks that is true, and I assume that, by using the word "think" he simply asked whether it is true or not to the best of his knowledge.

Mr. Goding: Except that the context of the question is such, and the tone is such that, if I may finish, your Honor—

Trial Examiner Lipscomb: Yes, go ahead.

Mr. Goding: I think it goes to his state of mind, his good intent.

Trial Examiner Lipscomb: It might be so inferred, but the words of the question do not necessarily lead to that implication.

Will the reporter read the question.

(The reporter read the question as follows:

"Question: Mr. Rose, do you honestly think that the respondent's preparation will do what is advertised
41 to do?")

Trial Examiner Lipscomb: Well, I have had the question read and I think it is a proper question. The way in which it is put is proper.

You may answer the question.

The Witness: Yes, sir.

By Mr. Callaway:

Q. What is your answer?

A. My answer is yes, sir.

Q. Now, I show you Commission's Exhibit No. 20, which is in evidence, which is an advertisement of Snyder Drugs. It is one of your advertisements, but it carries in the lower

left-hand corner a little coupon to be clipped out to be used in ordering respondent's preparation.

Now, that advertisement appeared in the early part of last year in the St. Paul "Pioneer Press". It appeared November 14, 1948.

I notice that none of your later advertisements have that coupon in them. Why?

A. We received an order from the Post Office Department which paragraph—

Q. Which forbid you from doing that?

Mr. Brodkey: No.

The Witness: They did not forbid us from doing that, but we decided, after—

42 Q. They brought an action against you to prevent you from doing that, is that correct?

Mr. Gettleman: I will object to that, if the Examiner please.

Trial Examiner Lipscomb: Objection—

Mr. Callaway: Let me ask it this way. Perhaps that is not correct.

By Mr. Callaway:

Q. You ceased doing that per agreement with the Post Office is that correct?

Mr. Goding: I object to that, if it please the Court.

Trial Examiner Lipscomb: Objection is sustained.

Mr. Callaway: Will you read the last question?

(The last question was read by the reporter as follows:

"Question: You ceased doing that per agreement with the Post Office, is that correct?")

Mr. Callaway: I do not believe he answered that question.

Mr. Gettleman: I will object to that question, if your Honor please. I do not believe it is germane. Why it was used. As a matter of fact, there are no representations in the coupon. This complaint is predicated upon representations in the advertisement. The coupon is just an

43 offer, an inducement for one to buy. I think it is not germane to the issue. I think the question is irrelevant and immaterial. It has no bearing upon the issues here whatsoever.

Trial Examiner Lipscomb: Objection is sustained.

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By Mr. Callaway:

Q. Mr. Rose, I call your attention again to Commission's Exhibit 32, which is the label on Imdrin, and the only thing I can see in there as to what it is for, it says "As an aid in the relief of muscular aches and pains." Is that correct?

Mr. Gettleman: I will object to that question, if the Examiner please. The label speaks for itself.

By Mr. Callaway:

Q. Why don't you talk about rheumatism in that?

Mr. Gettleman: I will object to that.

Mr. Brodkey: I will object to that in my own behalf.

Trial Examiner Lipscomb: Objection is sustained.

Mr. Callaway: Very well.

By Mr. Callaway:

Q. Did your labels ever contain the word "arthritis"?

Mr. Gettleman: I will object to that, if the Examiner please. That is not part of this issue whatsoever.

Mr. Callaway: I think it is.

Mr. Gettleman: There is only one label in evidence
44 here, Mr. Callaway, and I think your examination should be germane to that label only.

Trial Examiner Lipscomb: Objection is sustained.

Mr. Callaway: Now, I want to except to that ruling.

Trial Examiner Lipscomb: Exception is noted.

Mr. Callaway: I want to except to that ruling.

Trial Examiner Lipscomb: Your objection is already noted.

Mr. Callaway: And might I make an offer of proof here as to what would be the witness' answer if permitted to answer?

Trial Examiner Lipscomb: Yes, you may make an offer of proof.

Mr. Callaway: I want to—as an offer of proof, I want to state that the words "arthritis and rheumatism" are not on the label because of an agreement with the Food and Drug Administration.

Mr. Gettleman: If the Examiner please, not only is that objectionable but it is an unfair statement. There is no agreement.

Mr. Callaway: Now wait a minute.

Then, if I am not correct in that, let the witness answer as an offer of proof, then.

Mr. Gettleman: I think the entire thing is objec-
45 tionable.

Mr. Brodkey: I believe, in the light of the specific language of counsel's offer of proof, he would, of necessity, be offering to prove it by the contents of this label. It being the only label in evidence, and there being no evidence of any other detail which is to be considered relevant at this time, hence, I object to that offer of proof.

Mr. Callaway: Well, now, I am covering that. I am offering to prove that. If they object to my stating that, then I want the witness to be allowed to answer the questions as a part of the offer of proof.

Mr. Goding: I think this whole question is best answered by the proposition that any inquiry in this area is irrelevant, unless some other government agency has adjudicated a question which, in effect, constitutes res adjudicata.

Other than that, whether this witness, or any of the respondents, have changed the label is, as Mr. Gettleman has stated, and as he has reiterated, entirely irrelevant to the issues here.

Trial Examiner Lipscomb: I think your objection—I think your objection is well taken.

Mr. Callaway: I think that is all.

Cross-Examination by Mr. Gettleman.

Q. Mr. Rose, will you tell us what your functions
46 are in the organization

A. General administration, primarily in the sales.

Q. And where is your office located?

A. Cleveland, Ohio.

Q. You have been subpoenaed to appear here, have you not?

A. Yes.

Q. By the Government?

A. Yes, sir.

Q. Where is your principal place of business, may I ask?

Mr. Callaway: That is admitted in the answer.

Mr. Gettleman: Well, there was a little change.

Q. Where is your principal place of business?

A. At the present time in Cleveland, Ohio. Our plans are to move our general offices to Chicago.

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Mr. Gettleman: That is all.
Mr. Callaway: No further questions.
(Witness excused.)
Mr. Callaway: Your Honor, that completes the advertisements I desire to introduce into evidence, and I would like, at this time, an adjournment until 1:30 p. m., at which time I will have my first expert here ready to testify.
Mr. Brodkey: That is quite agreeable.
Trial Examiner Lipscomb: The hearing is adjourned to reconvene in this room at 1:30 p. m.

(Whereupon, at 11:30 a. m., a recess was taken until 1:30 p. m., this day.)

47 Afternoon Session.

1:30 p. m.

Trial Examiner Lipscomb: Come to order. You may proceed.
Mr. Callaway: If your Honor please, I would like to call Dr. Ephraim Shorr as a witness.
Trial Examiner Lipscomb: Mr. Reporter, this is Mr. Ephraim Shorr of 815 Park Avenue, New York City, New York.

DR. EPHRAIM SHORR, was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

Direct Examination by Mr. Callaway.

Q. Dr. Shorr, where do you live?
A. 815 Park Avenue.
Q. You are an M. D., a medical doctor?
A. I am.
Q. Doctor, you are going to be offered here today as an expert witness and the Commission is interested in the qualifications of an expert witness. I wish you would tell us, please, something of the degrees which you have received, both academic and scientific.
A. I have an A.B. Degree from Yale, and an M.D. Degree from Yale. Those are my degrees.

48 Q. Now, would you tell us something of the hospital appointments which you have had since graduation

A. I have interned at Mt. Sinai Hospital in New York for two years, and then I came to Bellevue Hospital where I remained until 1932 as a member of the attending staff. I joined the New York Hospital in 1932, and there have successfully held positions in the hospital of Assistant Attending Physician and now Attending Physician at New York Hospital, Department of Medicine.

Q. Now, what about medical college appointments since graduation

A. There have been a number. I came to Cornell in 1924 and rose from instructorship to assistant professorship, and then I rose to associate professorship in the Department of Medicine. The chief of the Metabolic Division of the Department of Medicine of Cornell Medical College, New York Hospital.

In addition, I have been a research fellow and the past few years have been associated in Russell Sage Institute of Pathology which is in affiliation with the Department of Medicine of the Cornell Medical College. Chief of the Endocrine Clinic, and head of metabolism.

Q. Now, can you tell us something of your scientific and medical society membership.

A. I am a member of a number of societies. The
49 Harvey; the Society for Pharmacology and Experimental Therapeutics; the Association for the Study of Internal Secretions. The American Clinical Society for Clinical Investigation; American Physiological Society; the Society for Experimental Biology and Medicine; Phi Beta Kappa, Sigma Chi, Alpha Omega Alpha, the American Medical Association, the Medical Society of the County of New York, the Medical Society of the State of New York, Diplomate of the American Board of Internal Medicine, the Association of American Physicians, Fellow of the New York Academy of Sciences, the Gerentology Society.

Q. Now, Doctor, did you do some work in behalf of the Office of Scientific Research and Development during World War II?

A. During World War II, as a result of a contract between the Office of Scientific Research and Development and Cornell University, in support of our studies, we carried out work throughout the war from 1942 to 1945 with this governmental agency.

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Q. And did you receive some kind of a citation for that work, Doctor?

A. A citation from the War and Navy Departments on June 1, 1947, in appreciation of an outstanding contribution to the work of the Office of Scientific Research and Development during World War II.

Q. Now, are you a member of any editorial boards
50 of any scientific journals?

A. I am a member of the Editorial Board of the Journal of Clinical Investigation; Editorial Board of the Journal of Psychosomatic Medicine; Member of the Gerentology Study Section of the United States Public Health Service; Member of the Josiah Macy, Jr. Foundation Conferences on Liver Injury, factors regulating blood pressure, metabolic interrelations, and the Club for Aging. With regard to the Editorial Board of the Journal of Clinical Investigation, I was retired during July to a regular rotation of membership.

Q. And were you also a member of the Gerentology Study Section of the United States Public Health Service?

A. I said that. I am now a member of the Advisory Council of the United States Public Health Service.

Q. You are presently in the position at Cornell University, Cornell University Medical College in New York Hospital—you have stated those, I believe?

A. Yes.

Q. Now, Doctor, do you participate in and direct any clinics or therapy conferences at New York Hospital?

A. Yes. I am Chief of the Thyroid Endocrine Clinic of the New York Hospital, and participate in one capacity or the other in the regular therapy conferences which are part of our teaching curriculum.

51 Q. Do you also participate directly in any pathological conferences at the hospital?

A. I participate in them, and occasionally direct.

Q. Now, what is the purpose and nature of such conferences?

A. They are of a pathological nature.

Q. Yes, go on.

A. They are designed to try to correlate the findings at post-mortem with the findings during the life of a patient, to clarify the motive action through which disease operates to cause death.

Q. Now, Doctor, do you participate in seminars and symposiums on metabolic and other diseases?

A. Yes. We have a weekly symposium—a weekly seminar, which—or clinic, as we call it, which I direct, and which, at the Cornell Medical College, in which metabolic diseases are discussed in terms of their pathology and physiology and biochemistry. It is a regular weekly process. I am also a member of the Josiah Macy, Jr. Conference on Metabolic Interrelationships.

Q. Now, Doctor, do you instruct medical students at Cornell Medical College with respect to various phases of metabolic diseases?

A. Yes, the instruction is largely my responsibility in that in the Department of Medicine.

Q. Doctor, are you the author of any scientific
52 articles that have been published?

A. Yes.

Q. I hand you several sheets of paper there. Is that the list—up-to-date list of your scientific publications?

A. No, this only covers two years.

Q. Only two years?

A. Yes.

Mr. Callaway: Will you mark these.

(The papers referred to were marked Commission's Exhibit Nos. 33 and 34 for identification.)

By Mr. Callaway:

Q. Doctor, I hand you Exhibits 33 and 34 and want to ask you if Exhibit 33 is not a list of your scientific publications up until 1947, and whether Exhibit 34 is a continuation since 1947 to the present time.

A. That is correct.

Q. Now, are those two lists where the articles are published?

A. Yes.

Q. For instance, the first one on Exhibit 33, does that mean it was published in the Archives of Internal Medicine, Volume 34, 2nd page?

A. That is the way it is.

Q. That is the way it is listed?

A. That is right.

53 Q. And in 1924?

A. That is right, 1924.

Q. And is that the regular usage in listing of scientific publications?

A. That is the way in which it is done.

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Mr. Callaway: Off the record.
(Discussion off the record.)

By Mr. Callaway:

Q. Doctor, would you tell the Trial Examiner all your publications?

A. Yes.

The Relation of the Suprarenals to Cholesterol Metaboblism. Joelson, J. J. and Shorr, E. Arch. Int. Med., 34, 841, 1924.

The Metabolism and the Respiratory Quotient of the Excised Renal Tissue. Riochardson, H. B., Loebel, R. O. and Shorr, E. Proc. Soc. Exper. Biol. & Med., 24, 243, 1926.

Respiratory Metabolism of Excised Normal and Diabetic Tissue. Richardson, H. B., Loebel, R. O. and Shorr, E. Proc. Soc. Exper. Biol. & Med., 25, 658, 1928.

Effect of Respiratory Depressants on the Respiratory Quotient of Excised Tissue. Loebel, R. O. and Shorr, E. Proc. Soc. Exper. Biol. & Med., 26, 722, 1929.

Tissue Metabolism. I. The Nature of Phlorhizin
54 Diabetes. Shore, E., Loebel, R. O. and Richardson, H. B. J. Biol. Chem., 86, 529, 1930.

Tissue Metabolism. II. The Respiratory Quotient of Normal and Diabetic Tissue. Richardson, H. B., Shorr, E. and Loebel, R. O. J. Biol. Chem., 86, 551, 1930.

The Respiratory Metabolism of the Tubercule Bacillus. Loebel, R. O., Shorr, E. and Richardson, H. B. Nat. Tuberc. A. Tr. 26th Ann. Meeting, p. 196, 1930.

A case of Osetitis Fibrosa Cystica (Osteomalacia?) with Evidence of Hyperactivity of the Parathyroid Bodies. Metabolic Study I. Hannon, R. R., Shorr, E., McClellan, W. S. and DuBois, E. F. J. Clin. Investigation, 8, 215, 1930.

Comparative Studies in the Respiratory Metabolism of Various Acid-Fast Bacilli. Richardson, H. B., Shorr, E., and Loebel, R. O. Nat. Tuberc. A. Tr. 27th Ann. Meeting, p. 1, 1931.

The Lactic Acid Cycle in Excised Mammalian Muscle. Shorr, E., Loebel, R. O. and Richardson, H. B. Am. J. Physical, 97, 559, 1931.

The Recovery Heat-Production of Mammalian Muscle. Catell, McK. and Shorr, E. Am. J. Physiol., 101, 18, 1932.

The Lactic Acid Cycle in the Excised Skeletal Muscle of

the Diabetic Dog. Shorr, E., Loebel, R. O., and Richardson, H. B. Am. J. Physiol., 101, 92, 1932.

55 The Nature of the Muscular Weakness in Graves' Disease. Shorr, E., Richardson, H. B. and Wolff, H. G. J. Clin. Investigation, 12, 966, 1933.

Endogenous Glycine Formation in Myopathies and Graves' Disease. Shorr, E., Richardson, H. B. and Wolff, H. G. Proc. Soc. Exper. Biol. and Med., 31, 207, 1933.

The Influence of Foodstuffs upon the Respiratory Metabolism and Growth of Human Tubercle Bacilli. Loebel, R. O., Shorr, E. and Richardson, H. B. J. Bact., 26, 193, 1933.

The Influence of Adverse Conditions upon the Respiratory Metabolism and Growth of Human Tubercle Bacilli. Loebel, R. O., Shorr, E., and Richardson, H. B. J. Bact., 26, 167, 1933.

The Metabolism of Acid-Fast Bacteria in Relation to Pathogenicity. Richardson, H. B., Loebel, R. O. and Shorr, E. Nat. Tuberc. A. Tr. 29th Ann. Meeting, p. 1, 1933.

Action of Ovarian Follicle Hormone in Ovarian Insufficiency in Women as Indicated by Vaginal Smears. Papanicolaou, G. N. and Shorr, E. Proc. Soc. Exper. Biol. & Med., 32, 585, 1935.

Influence of Thyroid Administration on Creatin Metabolism in Myxedema of Adults. Shorr, E., Richardson, H. B., and Mansfield, J. S. Proc. Soc. Exper. Biol. & Med., 32, 1340, 1935.

Creatin Metabolism in Atypical Graves' Disease.
56 Richardson H. B., and Shorr, E. Tr. A. Am. Physicians, 50, 156, 1935.

The Influence of Temperature on the Recovery Heat-Production of Mammalian Muscle. Cattell, McK. and Shorr, E. Am. J. Physiol., 113, 26, 1935.

The Action of Ovarian Follicular Hormone in the Menopause as Indicated by Vaginal Smears. Papanicolaou, G. N., and Shorr, E. Am. J. Obst. & Gynec., 31, 806, 1936.

The Respiratory Metabolism and Lactic Acid Cycle in the Excised Skeletal Muscle of the Depancreatized-Hypophysectomized Dog. Shorr, E., Richardson, H. B. and Sweet, J. E. Am. J. Physiol., 116, 142, 1936.

Changes in the Vaginal Smears of the Menopause during Periods of Spontaneous Symptomatic Relief. Shorr, E., and Papanicolaou, G. N. J. Clin. Investigation, 15, 454, 1936.

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The Biological Assay of Estrongenic Substance in the Human by Use of Vaginal Smears. Richardson, H. B., Shorr, E., and Papanicolaou, G. N. Tr. A. Am. Phys., 51, 213, 1936.

Restoration of Carbohydrate Oxidation in Diabetic Tissue in Vitro. Shorr, E. Science, 85, 456, 1937.

The Respiratory Metabolism and Lactic Acid Oxidation Quotient of Excised Cardiac Muscle of Normal and Depancreatized Dogs. Shorr, E., Malam, M. and Richardson, H. B. Am. J. Physiol., 119, 404, 1937.

57 The Influence of Iodoacetic Acid on the Respiratory Metabolism of Mammalian Tissues. Shorr, E., Barker, S. B., and Malam, M. Science, 87, 168, 1938.

The Respiratory Metabolism and Lactic Acid Cycle in the Excised Cardiac Muscle of the Depancreatized-Hypophysectomized Dog. Shorr, E., Sweet, J. E., and Malam, M. Am. J. Physiol., 123, 185, 1938.

Inhibitory Effects of Male Sex Hormone on Human Menstruation and Their Evaluation by Vaginal Smears. Papanicolaou, G. N., Ripley, H. S., and Shorr, E. Proc. Soc. Exper. Biol. & Med., 37, 689, 1938.

Neutralization of Ovarian Follicular Hormone in Women by Simultaneous Administration of Male Sex Hormone. Shorr, E., Papanicolaou, G. N., and Stimmel, B. F. Proc. Soc. Exper. Biol. & Med., 38, 759, 1938.

Endocrine Problems in Adolescence. Shorr, E. Preventive Medicine, 8, 102, 1938.

Suppressive Action of Testosterone Propionate on Menstruation and Its Effect on Vaginal Smears. Papanicolaou, G. N., Ripley, H. S. and Shorr, E. Endocrinology, 24, 339, 1939.

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Q. Now, Doctor, from what kind of diseases do most of the patients whom you see in practice suffer?

A. They suffer from diseases of metabolism.

Mr. Brodkey: May I, at the risk of interrupting the doctor, only momentarily, suggest that if we anticipate the doctor is going to testify to some phase of metabolism
76 for which he is now being prepared, that we will object to testimony on that subject because we feel that there is no representation contained in the complaint or literature of the respondent here from which the complaint was drawn, which touches directly or indirectly upon the question of metabolism.

There is no such representation made in word or general import, and for that reason we will object to all testimony on that subject.

Mr. Callaway: I think, your Honor, as this testimony is developed, it will be shown that all diseases definitely establish up with metabolism of the body. I think that the pertinency and the direct connection of this testimony with the allegations of the complaint will be developed clearly as we go along and if, after the testimony is given, counsel for respondent still feel as they now do, why, then, they can make a motion to strike.

I think, by the time the testimony is given, that they themselves will see the relevancy.

Trial Examiner Lipscomb: You may proceed.

Mr. Brodkey: May is please the Examiner, I should like to say this, in support of the original proposition, that unless it appears that the claims made by the respondent here are alleged to have been made, go to the cure, or possibility of cure, of disease, we are not concerned, at
77 this stage at least, with any matters relating to metabolism, since it is the position of respondent, in this matter, that the claims are completely different from that, that they relate to such matters as alleviation of pain, to contrast those with the concept of cure.

So, therefore, unless I misunderstand, any testimony on the subject of metabolism will go to cause and effect of

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disease. I believe the doctor will probably bear that out, and if so, I regard it as irrelevant to the position which the respondents have taken with respect to what they are representing.

Mr. Callaway: Perhaps it is contrary to the position that respondents have taken as to what they are representing, but it certainly is not contrary to the position taken in the allegation of the complaint.

Trial Examiner Lipscomb: Mr. Callaway, you may proceed to examine your witness.

Mr. Gettleman: May we except to the rule.

Mr. Brodkey: I except to the rule.

Trial Examiner Lipscomb: You may except, your exception is duly noted on the record.

By Mr. Callaway:

Q. Now, Doctor, you said that most of the patients whom you see in practice suffer from diseases, from disturbances of metabolism, is that correct?

78 A. Yes, sir.

Q. Will you please explain in language that a layman can understand just what is meant by the term metabolism?

A. Metabolism, in essence, differentiates inert systems from living systems. That is a broad definition.

It is a term that is used comprehensively to include all of those processes which take place in living organisms and which provide between the obtaining of foodstuffs, whatever they may be, whether they be plant or animal, the conversion of those foodstuffs into energy to support the vital processes by which living organisms survive, and it deals not only with intake, the utilization of the foodstuffs, the conversion of these foodstuffs into one variety or the other within the body, the release of energy from these foodstuffs, mediated by the ductless glands, by the enzyme systems and the waste products of this process, including the manner in which these waste products are dealt with by the organisms.

Q. Now, Doctor, would that include both normal organs as well as those which are diseased?

A. That would—

Mr. Brodkey: May I just ask the Trial Examiner if it might be understood that respondents have a continuing objection to this line of testimony?

Trial Examiner Lipscomb: Yes.

A. Yes.

79 By Mr. Callaway:

Q. Your answer to that question is yes?

A. Yes.

Q. Then I take it from your explanation that most of the patients whom you see and treat have diseases involving faulty metabolism?

A. That is correct.

Q. Doctor, is faulty metabolism connected in any way with malfunctioning of enzyme systems?

A. We believe that faulty metabolism is connected with malfunctioning of enzyme systems, and in many instances we have been able to actually relate a specific faulty metabolism with specific derangements in enzyme systems. This is a field which is still growing, so that we do not know the whole answer, all the answers, but we are progressively learning that enzymes are, in their relationships to metabolic processes, are of the highest importance in maintaining the body in health, and in the maintaining—

Q. Now, Doctor, what is an enzyme?

A. An enzyme is a constituent of living tissue which may often be separated from living tissue and still preserve, in its action, which catalizes or accelerates the rate of processes of living processes so that rates are determined, rate processes are accelerated to a degree which is far beyond the possibilitye for that process to go
80 on in the absence of this catalytic agent.

Thus, two constituents might be in a test tube for centuries and not inter-react, or inter-react very slowly. But, by the intervention of an enzyme that reaction may be made explosive and so, in a living body, for example, many reactions are too slow, or so fact, that their speed is infinitely greater than could be expected if they were not helped by means of these catalytic agents. These catalytic agents are enzymes. They participate in the reaction, sort of like a bucket brigade taking energy from one molecule, and transferring it to the other, and in so doing they assist these processes, usually remaining quite intact themselves as they participate.

Q. Now, Doctor, what is meant by the term enzyme system?

A. An enzyme system would comprise an enzyme with

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some of its assistants, which are called co-enzymes, plus the foodstuff on which that enzyme operates, or series of foodstuffs on which that enzyme operates.

Some enzymes are extremely specific and some operate on a variety of systems.

Mr. Callaway: Now, if your Honor please, at this time I want to say that in Commission Exhibit 31, which is a small leaflet put out by the respondent, I want to read one statement made by respondent in its advertising, which will, in some nature, explain and tie up the Doctor's testimony.

81 "For aid in and insuring adequate functioning of the vital enzyme systems (biochemical catalysts) of the blood and bones, manganese and succinate have been scientifically combined for maximum effect."

Now, I make that statement at this time so that the Trial Examiner, or respondent's counsel, may be worrying about the revelancy of Dr. Shorr's testimony.

Q. Now, Doctor,—

Mr. Callaway: I might say further that that claim is made in connection with the overall claims of respondent's preparation for rheumatism and arthritis and allied conditions and the symptons thereof.

Mr. Brodkey: Now, I must object to counsel's characterization of it. It probably speaks for itself and if he is being permitted to read a portion into the record, so much the better, but I think counsel's characterization of the import and effect of any such representation should be stricken, and I so move.

Trial Examiner Lipscomb: It remains merely as a characterization.

By Mr. Callaway:

Q. Now, Doctor, how long had you been engaged in the study and treatment of diseases involving faulty metabolism?

A. If you include my medical school—

Q. Yes.

82 A. Since 1918.

Q. For how long a period have you been doing research work on metabolism?

A. Since 1919.

Q. Doctor, is there a class of compounds known as succinates?

A. There is.

Q. Does calcium succinate belong to this class?

A. It does.

Q. Has any of your research work been concerned with the effect of succinates on metabolism?

A. A great deal of it has.

Q. Now, I might also call—

Mr. Callaway: I should like the Trial Examiner to note that calcium succinate is an ingredient in respondent's preparaation according to the formula set forth in the complaint and admitted by the answer.

By Mr. Callaway:

Q. Now, Doctor, a part of your record of training and experience, you stated earlier, indicates that you are the recipient of a citation from the War and Navy Departments in appreciation of the outstanding contribution to the work of the Office of Scientific Research and Development during World War II?

A. Yes.

Q. And in that there was research with succinates
83 included in that work for which the citation from the War and Navy Department was awarded?

A. It was.

Q. And the studies were among those reported in the scientific publications, were they not?

A. They were.

Q. Now, Doctor, in your opinion, what would be the effect of calcium succinate on normal tissue metabolism of the body?

Mr. Brodkey: I object.

By Mr. Callaway:

Q. When present in sufficient concentration to have any effect.

Mr. Brodkey: There is a pending objection to the question of an opinion from the Doctor on the effect. This brings us back to our first point of departure, I believe, and as much as I regret it, it will be necessary to restate it at this point.

I believe that unless the Trial Examiner has already determined, which I think highly unlikely, that the issue in this case involves cure, which, of course, would leave room for the opinion of the medical expert in this instance, that we must, therefore, exclude that opinion for the same reason as our first objection was made.

I do not think that the Trial Examiner has made that determination as yet and to that end I regard it, in the
84 least, shall we say, premature, and certainly irrelevant.

Mr. Callaway: Now, if your Honor please, I am at a loss to understand the gentleman here. There are certain issues drawn by the complaint and aswer. One of the allegations of the complaint, and I am reading from (B) and (F) under Paragraph Four. It says that respondents have represented "That Imdrin will arrest progess of, correct the underlying causes of and cure all kinds of arthritis or rheumatism, neuritis, sciatica, gout, neuralgia, fibrositis and bursitis."

And "That Imdrin will correct any disturbance of, and will insure adequate function of, the vital enzyme systems of the blood or bones."

Now, he denies that. So that certainly it makes it an issue.

Then we say next, in (2), under Four, subparagraph (2) under Four, that "Imdrin, however taken, will not arrest the progress of, correct the underlying causes of, and will not cure any kind of arthritis or rheumatism, neuritis, sciatica, gout, neuralgia, fibrositis or bursitis."

Now, he denies that. So that definitely makes it an issue in this case, as to whether Imdrin will do that or not.

Mr. Brodkey: The reason we believe that these do not create the issue is that one of these charges is de-
85 pendent upon the other. Counsel has not, up to this moment, shown us, other than by import, or what we regard as unreasonable latitude of inference, that any such allegations were made. If they were made in some other matter we do not have them. Therefore, we feel that the only way the Trial Examiner could come to the conclusion that they present a relevant issue is not simply from the fact that that import is charged in the complaint, but rather that it is charged as a specific factual representation on our part, and not the matter of representation of inference as counsel sees that inference.

For that reason we renew our objection at this time.

Mr. Callaway: If I am understanding you correctly, you have taken the position that the Trial Examiner should try this case piecemeal. He should first determine what they have represented.

Mr. Brodkey: I think so.

Mr. Callaway: And then, as to whether those representations contain truth or not.

Now, I am not used to trying a lawsuit that way.

This goes to trial on the merits of all the allegations in the complaint, and that is a part of the general proposition that is submitted to the Trial Examiner.

I do not see any call for the Trial Examiner to try it piecemeal as he seems to ask.

86 Mr. Brodkey: I would not characterize the requirement as one for trying it piecemeal as much as for making it, in legal parlance, the relevance apparent at the moment.

We can only test the relevancy as it appears and, to us, it does not seem that it appears until the Trial Examiner has determined the full nature of those representations.

If counsel believes that there is something to be read into them, beyond their exact language, then I believe it is necessary for the Trial Examiner to make that determination, or the relevance escapes us.

Trial Examiner Lipscomb: The objections of counsel for the respondent is overruled.

You may proceed.

Mr. Brodkey: May we except, your Honor?

Trial Examiner Lipscomb: Exception is noted.

By Mr. Callaway:

Q. Now, Doctor, in your opinion, what would be the effect of calcium succinate on normal tissue metabolism of the body when present in sufficient concentration to have any effect?

A. It is a difficult question. I am not used to answering questions that are put in such categorical fashion and if I am allowed to expand on my reasoning—

Q. I think you can.

87 A. Then I would give a definite answer.

Q. You can.

A. If that is agreeable?

Trial Examiner Lipscomb: Go ahead.

A. In my opinion, from my reading and my own observations, if succinate were present in the body, in physiological amounts, those in which they are presently and normally in the body, then it would subserve its normal function in the organism.

If it is added in amounts which effect the metabolism of the tissues over and above the amounts which are normally present in the body, then those effects, in my opinion, would be deleterious.

Mr. Brodkey: I do not wish to interpose too many objections here, and I apologize to the Trial Examiner for so doing, but I believe that that answer lacks responsiveness to the question as put, and for that reason I move that it be stricken, if the Court should re-read the question. I believe the answer is not strictly responsive to it.

The question, as I recall it, said something to amount did it not.

Trial Examiner Lipscomb: Would you read it?

(The reporter read the question as follows:

"Question: Now, Doctor, in your opinion, what would be the effect of calcium succinate on normal tissue metabolism of the body when present in sufficient concen-
88 tration to have any effect?")

Mr. Callaway: Now, he has said, when it was present in the body in sufficient amount to affect tissue metabolism, it should be deleterious.

Trial Examiner Lipscomb: Objection—

Mr. Brodkey: The Doctor wishes to add something, I can see.

The Witness: No, I think Mr. Callaway has improperly characterized it.

Mr. Brodkey: That is what I thought.

By Mr. Callaway:

Q. Explain it further?

A. I think the difficulty is that, in the wording of the question, if I may say so, it becomes difficult to cope with it. I think it becomes difficult to everybody's satisfaction, because it is like saying, if insulin is present in the body, will it properly—will it serve a useful function or will it be harmful.

Now, insulin is part of the normal physiology of the body, and if one then asks if insulin is given in amounts, large amounts by which it brings about certain other changes in the body, would its effects be deleterious.

Now, this is just an example which is not the best I can choose, because here, as I can see, we are trying to differentiate between a substance which is present in
89 infinitesimal amounts in the body and which serves the normal purpose as against the introduction of that substance in amounts which are in excess of the normal and which can, therefore, bring about effects which are over and above those which are normally exercised by this substance.

I think that was probably what you may be getting at. Now, is that correct?

Mr. Brodkey: I believe that the matter being as complicated as would appear at first blush and the difficulty of making responsive answers to the question as agreed as it seems to be, I will withdraw the objection and let the Doctor's answer stand.

It would be appreciated, however, if the Doctor did not volunteer explanations and the like, except in response to Government counsel's questions hereafter.

The Witness: I am sorry.

Mr. Brodkey: In every case where they can be made responsive, the respondents would appreciate their being made so.

Trial Examiner Lipscomb: You are within your license and privilege, sir. They should be limited, Doctor.

By Mr. Callaway:

Q. Now, Doctor, are you acquainted with any effects induced by salicylates on tissue metabolism?

90 A. I have some acquaintance with effects of salicylates, a variety of enzymatic reactions, variety of enzymatic reactions in living tissue.

Q. Now, I wish you would go ahead and explain that further, if you think it would clarify the situation for us.

Mr. Brodkey: I take it you are asking the Doctor to explain the nature of his experience in that particular field?

The Witness: My experience here is indirect. It is my reading.

Mr. Brodkey: It is reading?

The Witness: Yes, reading, and there I am dependent upon other people's experiments, as we all are. There is provided, I think, excellent evidence from the experiments of Lutwak Mann that when salicylates are—when living tissues are exposed to salicylates in appropriate concentrations, that certain enzyme reactions are reduced in their extent as they are inhibited.

Mr. Brodkey: I dislike interrupting you, Doctor, but did I understand you to say that your experience is based solely upon this reading?

The Witness: That is right.

Mr. Brodkey: I think we had best move to strike that answer under the circumstances; though, of course, he has

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not as yet stated what the nature of those readings were.

Mr. Callaway: If your Honor please, he can give
91 an opinion based on his own experience, his education, and the literature. He is a medical man and he is entitled to an opinion.

Mr. Brodkey: The question, however, asked for his experience, I believe, and that experience, of course, would connote that it was his own.

Mr. Callaway: The question asked was, was he acquainted with any effects and use of salicylates.

Trial Examiner Lipscomb: I think that Doctor's testimony should not be stricken merely because it has a bookish turn, and the objection is overruled.

Mr. Brodkey: There will be an exception, please.

Trial Examiner Lipscomb: The exception is noted.

The Witness: Shall I continue?

By Mr. Callaway:

Q. Yes, continue, Doctor.

A. The enzyme systems that have been explored are several, and I can cite them, if you would like.

There is one enzyme called oxidases, which reacts on purines and that enzyme is inhibited in its rate of activity.

There is another enzyme called carboxilates which is associated with the decarboxilation of pyruvic acid, a very important process.

I am sorry these terms have to be technical, but
92 I can go into each of these in detail, if you will. The removal of carbon dioxide from pyruvic acid—pyruvic acid is one of the major constituents of our living chemical processes.

There is a third enzyme system that has been found to be inhibited in this way and that is called the indefinal oxidases system or Citochrome oxidate system.

Now, the importance of this system is that it is the only way by which we can get oxygen from the air to take care of the oxidations in the body. It is the final step by which oxygen becomes available for oxidation of foodstuffs.

So that these, in addition to these that I have mentioned, salicylates have also been found to be inhibited—

Mr. Brodkey: What was that last?

The Witness: Salicylates.

Mr. Brodkey: Well, now, I am going to ask that that matter be stricken. It is not responsive to any question.

Mr. Callaway: I asked him about that.

The question was this: Are you acquainted with any effects induced by salicylates on tissue metabolism.

Mr. Brodkey: The answer definitely calls for a yes or no answer.

Mr. Callaway: And then I asked him to explain, and that is when you started your objection.

Mr. Brodkey: I think we better proceed, your Honor.

93 Trial Examiner Lipscomb: Proceed, Doctor.

A. (Continuing.) Additional enzyme systems, which have been found under conditions of these experiments to be inhibited with several dehydroginates, including the succinate dehydroginates, that also involving lactic dehydroginates. In other words, that a variety of enzyme systems were observed by this worker to be inhibited by salicylates.

In addition, in the living organism, a very important action was also noted which must be considered of a deleterious nature. Namely, that an animal injected with an appropriate amount of salicylate, and the dosage bearing from .2 to 1 milligram per gram of body weight, that the liver lost all of the glycogen, or virtually all of the glycogen.

Q. What is that?

A. Glycogen is the animal starch. It is the reservoir of sugar, and under these experiments glycogen content fell strikingly and then, in 24 hours after the administration returned to normal levels.

This glycogen metabolism involves a variety of enzyme systems, but here we must confine ourselves to the overall effect, the glycogen was wiped out of the liver under the conditions of the experiment.

Mr. Goding: Mr. Trial Examiner, it is not entirely clear to me, and I did not want to interrupt while the Doctor was speaking until he had completed his an-

94 swer, but I should like to know at this point whether this whole answer, in effect, was a statement of the results of the work of one specific worker in the field?

Trial Examiner Lipscomb: Perhaps the Doctor—

Mr. Brodkey: And I should like to ask, more particularly, what particular work.

Trial Examiner Lipscomb: Will you answer that?

The Witness: Yes.

Mr. Goding: I would like to have the answer to my question, whether it refers to the result—

The Witness: The main part of the work was done by Lutwak Mann.

Mr. Goding: By one person?

The Witness: That is right.

Mr. Goding: Then I move that this whole answer be stricken as being violative of the hearsay rule.

Now, I see my brother arising so I would like to complete my point.

As I understand, the rule of evidence with regard to technical literature, that the witness, the expert witness, may base his conclusions on the basis of his reading of that particular technical literature, but for him to cite and particularize with regard to the work of any individual, and by name, bringing in the results of that work, it deprives us, I think quite obviously, of cross-examination.

95 Mr. Callaway: I agree with him, on that, your Honor, but I think that the statement by the Doctor was as a result of the objections and the questions of respondents' counsel.

Mr. Goding: I did not understand it that way.

Mr. Callaway: I think that is correct.

Mr. Goding: I did not understand it that way.

Trial Examiner Lipscomb: I did not so understand it, and I think the objection is well taken.

A few minutes ago, when the objection was made to the Doctor testifying on the basis of his literature or reading the literature, I overruled that objection, because I considered it a general objection and we will not forestall the witness's testifying as to his general education. But, as you say, we come to a particularized experiment to report the result of that experiment does deprive the respondent of the right of cross-examination.

Mr. Brodkey: And on that basis I believe, your Honor, we should strike all the evidence with respect to it.

Mr. Goding: I have moved to strike.

Trial Examiner Lipscomb: And the motion is granted, and the answer is stricken.

Mr. Callaway: Now, I think we can continue.

By Mr. Callaway:

Q. Doctor, in your view, or in your opinion, what
96 would be the next effect induced by salicylates on tissue metabolism?

Now, you can base that opinion on the literature, on experience, or on anything that has come up in your career. Respondents' counsel object to your stating just what you did base it on, but what, in your opinion, is the effect induced by salicylates?

Trial Examiner Lipscomb: If I may inject there, I think counsel for the respondent is objecting, Doctor, to you giving the result of an experiment. You see, when you give us the result of any experiment, we do not have the one who performed the experiment here under oath.

The Witness: Yes, I understand.

Trial Examiner Lipscomb: And, therefore, you are taking it second-hand.

The Witness: Yes, that is right.

Trial Examiner Lipscomb: Which may be quite trustworthy, but nevertheless, we do not have the man under oath and we do not have the opportuntity to cross-examine the person.

The Witness: Yes. Here I think that perhaps, if I started out by a few sort of basic consents, that underlie what I have to say here—

Mr. Goding: Excuse me, Doctor. I really apologize to you, and to you, Mr. Trial Examiner, but I do not want
97 to break in. I think, if the question is re-read, the Doctor will realize it is rather a simple question and I think he should attempt to be as brief and direct as he can.

Trial Examiner Lipscomb: Will you read the question.

(The reporter read the question as follows:

"Question: Doctor, in your view, or in your opinion, what would be the next effect induced by salicylates on tissue metabolism?

"Now, you can base that opinion on the literature, on experience or on anything that has come up in your career.

"Respondents' counsel objects to your stating just what you did base it on, but what in your opinion is the effect induced by salicylates?")

The Witness: May I say, in disagreement with you, sir, that it is by far from being a simple question. It is

as if you went into a shop and you said, "How much does it cost?" and the answer was, "It costs money."

Mr. Goding: Doctor, try to be as simple as possible without relying specifically on any words.

The Witness: The effects of any substance depends on the concentrations. It depends upon the amount administered.

Therefore, any answer has to qualify those effects.

The studies on enzyme metabolism are most exactly
98 carried out on living tissues in the body. I therefore have to state my conditions underlying my answer, and I would say that, on the basic of observations, on the basis of my knowledge of observations on the effect of certain concentrations of salicylate on a variety of enzyme reactions in isolated tissues, and on the basis of my awareness of observations which have shown that the liver is depleted, its glycogen stores an adverse phenomenon by the administration of salicylates. Where those conditions obtained in a living body, I should anticipate that the effects on metabolism, in that specific—to that specific degree, would be deleterious.

Mr. Goding: Thank you.

By Mr. Callaway.

Q. Now, Doctor, in your opinion, would the effects of a combination of succinate and salicylates—would the effects of a combination of succinate, such as calcium succinate, and salicylates, in the form of aspirin and manganese salicylate, counteract the adverse effect which you have just described on the normal tissue metabolism?

Mr. Brodkey: I must object to that. I think there has been no showing here that the Doctor has had adequate foundation by way of experience or anything else with respect to any such combination of the elements mentioned, and until that is done, at least, we must object.

Mr. Callaway: Well, now, he certainly has the ex-
99 perience with calcium succinate, and he has had experience, or rather, he has given an opinion as to the effect of salicylates, both.

Now, he is certainly entitled to an opinion as to the combination of the two.

Mr. Brodkey: I do not think that follows logically, or otherwise. I believe that the combination may well include other elements, and I believe the Doctor will so state if inquired into.

As a matter of fact, unless he can show that he has had the experience indicated with that particular combination, I believe that the foundation is not there.

Mr. Callaway: That is contrary to a dozen court decisions, at least.

Trial Examiner Lipscomb: The objection is overruled. Doctor, you may answer the question, if you can.

Mr. Brodkey: Exception, please.

Trial Examiner Lipscomb: Your exception is noted.

The Witness: I have testified that under the conditions which I specified, from my answer to the succinate question in which I defined the conditions under which the adverse effects of succinates were contained, and from my evaluation of the reported effects of salicylates, that the addition of the two would not seem to me to provide
100 any reason for expecting that the undesirable effects would be any less than they were with the combination of both elements separated.

Q. Now, Doctor, in your opinion, would succinates, when present in any sufficient concentration to have any demonstrable effect, correct and restore to normal any enzyme system that is not functioning normally?

A. I can only—any enzyme system is rather broad. I can only discuss it in relation with the enzyme systems that I have been familiar with.

Q. Limit it to those, then.

A. On the basis of my studies on a variety of vital reactions, associated with enzyme systems, as they are affected by succinate, the effect of succinate on these enzymes systems is deleterious and the more succinate is provided into the systems, the more deleterious was their action.

Q. Now, Doctor, is there any evidence from any studies on living organisms, either human or animal, or living tissue, which has demonstrated a lack of succinate?

Mr. Goding: Excuse me. I am afraid I will have to object to this. If this is consistent, or of the same character as the previous question, at the same time I feel I should move to have that answer stricken. I think, at least this question relates specifically to studies. I think we are getting far afield from the general rule of offering probative evidence to an expert as to what the field
101 of expertees, or how to view the field of expertees in this area use a certain situation.

I think that is far different, as in that, of course, it is admissible. When it is based on the expert's wide reading it is admissible. But, where, as counsel here has previously stated, or based his question, rather, on studies that were conducted, I think we are referring—I think he then refers specifically to certain specific workers who, again, I say, are depriving us of the right of cross-examination.

Mr. Callaway: Now, if your Honor please, I do not mean to put them in that sort of attitude. That rule which they are talking about is a very good rule and I want to adhere to it. I might rephrase the question this way:

By Mr. Callaway:

Q. Doctor, in your career, either from your own experience or from your studies, are you familiar with any studies on living organisms, either human or animal, or living tissues, which has demonstrated a lack of succinate? Now, I might ask it in that way.

Mr. Callaway: I might state at this point that here is a situation we are confronted with. The Doctor says succinate in a small amount is present all the time in the body. Now, what he is talking about is the deleterious effect of succinate when it is in larger amounts than 102 there are normally in the body.

Now, when they advertise that such a combination of succinate, and these other ingredients, will do certain things, it could be that they mean in the absence of succinate in the body that it would do those things.

Now, I am asking, is there any condition which he is familiar with which shows that absence of succinates in the body, which would exclude that advertisement from applying to such a possibility. That is the purpose of the question.

Now, he said that succinates, in larger concentrations than they are in the body, are deleterious. Succinates are normally present in the body.

Now, then, if there would be a condition in which the body did not have succinates in there, then their statement might be correct. Under those conditions it might be correct, and that is what this question is directed to, to closing that door.

Mr. Goding: Yes, I understand fully what my brother has in mind. I reiterate my objection and I ask now that

the witness should direct his attention very closely to the fact that you are now answering with the matter of whether you are familiar with any studies of the type which my brother refers, when he answers, if he does in the affirmative, and the next question, I anticipate, will be what they are, and the results. I shall then object,
103 because there, again,—and I am mentioning this now in order not to needlessly delay this, but to make it clear as to what our position is. There, again, we are, I think, abandoning this proper area of direct examination for probative evidence.

This is not cross-examination to test the credibility or background of the witness.

Mr. Callaway: Well, now, if your Honor please, that question that I have last asked violates the parol evidence rule, and I certainly want to withdraw it, because I do not want to ask a question that would violate that rule.

Now, if your Honor please, if you think that it violates that rule, why, I will withdraw it.

Trial Examiner Lipscomb: Well, the Trial Examiner is not certain, but the Trial Examiner is of the impression that it comes dangerously close to it, and I think we are all in accord as to the principles of evidence to be applied, but the application sometimes brings about slight differences.

Mr. Goding: And I ask now that the previous question, which has been answered, it was not clear to me, I think with full cooperation by my brother, it will be made now abundantly clear whether the witness's attention was directed to certain specific studies and it would seem to me that his answer seemed to indicate that the question was so directed.

Mr. Callaway: I am withdrawing that question.

Mr. Goding: I am talking about the previous ques-
104 tion. I do not want to get into a complicated morass here. I do think it is important to us to have, not this distinguished witness, but the actual worker here, or workers, who conducted the investigations, subjected to cross-examination.

Trial Examiner Lipscomb: That is, if they are going to put in the product.

Mr. Goding: That is right.

Mr. Brodkey: That is right.

Trial Examiner Lipscomb: Yes, you are quite right.

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Mr. Goding: I do not know whether he can—I am sure that, even if it does take a little while, the reporter can go back to the last question which was answered. I would like to have that read back.

Trial Examiner Lipscomb: Off the record.

(Discussion off the record.)

By Mr. Callaway:

Q. Now, Doctor, in your opinion, is there ever any lack of succinate in the body?

A. I know of no evidence. I know of no experimental evidence that there is a lack of succinate in the body. I know of no clinical conditions which are associated with the lack of succinate and only under extremely abnormal clinical—experimental conditions, outside of the body, with the use of substances which are not ever involved in all tissue metabolism can you create a situation in which
105 there is an absence or lack of succinates.

Q. Doctor, do you know of any condition, then, for which it would be necessary or desirable to administer succinate in order to insure normal or adequate functioning of any enzyme system?

A. I thought I did, a few years ago.

Trial Examiner Lipscomb: Off the record.

(Discussion off the record.)

Trial Examiner Lipscomb: On the record.

By Mr. Callaway:

Q. Now, Doctor, have you made any studies to determine whether the administration of succinates is desirable or undesirable in the functioning of any enzyme system?

A. This is going to be somewhat lengthy, or I think I am going to have to be a little lengthy.

My original interest in succinate arose from the possibility that it might exert a very beneficial effect on disordered tissue metabolism, particularly in shock, where the tissue does not get enough oxygen, in aviation medicine where pilots are exposed to a low oxygen tension.

It has been previously shown by a number of workers and we confirm that when you put a tissue at the disadvantage of not having enough oxygen to consume, that if you place succinate in the medium in appropriate concentrations, that the oxygen consumption, the energy of
106 that— the energy production of that tissue is indeed elevated and in many instances restored to normal.

These results seemed extremely favorable toward succinate having a role in these disordered,—of this metabolism. But it seems, from further experiments, it became evident that we were misled in our original optimistic reaction to this particular phenomenon which others had reported and which we were able to confirm.

We asked ourselves what kind of energy does succinate furnish, is it good or is it bad.

Now, how does one go about studying, or resolving that question. One can resolve it, I think, the following way: By taking a number of important, vital processes of tissues which are depressed under these circumstances and assume whether the energy that you get from the succinate oxidation restores it to normal. If it restores it to normal then that energy is beneficial. And so we set about picking out a number of important vital processes.

One of these was the formation of urea by the liver. The other was the formation of acetyl choline by the brain. Acetyl choline is a chemical mediator of the nervous impulse.

We study the ability of the kidney to remove one of the constituents and ammonia from aminol acid. That is one of its jobs that it must do every moment of the day. Then, finally, we studied the high energy phosphates in the 107 cell.

The high energy phosphates occupy a key role in all of the reactions which go on in the cell.

These substances, of which the two we studied are creatine phosphate and adeniphin triphosphate belong to this group of substances which are involved in the transfer of energy into useful work, into enzymatic work, into all of the precesses by which living tissues are characterized.

We observed that the energy provided by succinic acid, or succinate, was entirely futile in restoring any of these important processes which were deranged. In fact, not only did it fail to restore them to normal, but depending upon the concentration of succinate, it worsened them. That it, it made them less good so that there was less acetyl choline formation by brain tissue than normal.

There was less deamination of amino acids by the kidney. There was less urea formation by the liver, and the high energy phosphate, without which life is not possible, and these were actually further reduced in concentration in these living, smooth-muscled and hard-muscled cells.

We finally went to an experiment which we think is

equally crucial. If you take a smooth muscle of a rabbit you can keep it alive out of the body and it contracts very nicely and rhythmically, as long as it has glucose, sugar, in the medium. Now, if you take sugar away from it, its
108 contractions slowly are reduced until they may entirely disappear. If, at that point, you add a substance which is useful for the energy of that smooth muscle contraction, there is a prompt restoration of contraction and you can go on fnr hours.

It provided us with an extraordinarily useful means of finding out what is useful for smooth muscle contraction and has provided other workers with an excellent tool which they have used in confirming our results and in extending them.

Now, succinate, when exposed to smooth muscle, stimulates its respiration greatly, but there is never a twitch to indicate that it is useful for the energy of that smooth muscle contraction. The contraction just stays low and disappears.

So that, by shifting from a tissue slice to an actual living muscle, we have, one by one, in our work, explored very specific enzymatic reactions in which succinate might be involved and in which the effect of succinates—on which the effect of succinate might be ascertained and found that the energy provided by succinate acid oxidation was not only useless for these enzymatic processes, but may actually worsen them and by going to a tissue which not only survived outside of the body but actually operated outside of the body, we found that the energy provided by
109 succinate was entirely useless for supporting the contraction of that muscle, whereas, on the substances of which a wide number were studied, which are part of the normal economy of the body, did restore the contractility to the muscle.

Mr. Goding: Mr. Trial Examiner, I would like to have one point clarified. The Doctor testified to certain studies that were conducted. I should like to be informed as to his relationship to those studies.

The Witness: Director and participant. This was under a OSRD contract.

Mr. Goding: Very well.

By Mr. Callaway:

Q. Now, Doctor, in these studies, what form of succinate did you use?

A. Usually used sodium succinate, the important thing being the succinic acid.

Mr. Brodkey: I think we will have to move—

Mr. Callaway: Wait, just a minute.

By Mr. Callaway:

Q. In your opinion, had you used calcium succinate in these studies—

Mr. Brodkey: Well, now, I am going to object to that question as well. That question presupposes that the Doctor would know what effect it would have in the same manner as he has related his last study, if he has used some-
110 thing else. Now, I think it is very apparent the Doctor learned something from the study in question and if that is true he might have learned something else, perhaps, from having used the other ingredients rather than the ones which he used.

Mr. Callaway: I think the Doctor can clear that up for you if you just wait a minute.

Mr. Brodkey: I will be glad to give him an opportunity, but my present motion is the same. I am objecting, by the way, to this last question.

May we have a ruling on that objection, your Honor?

Trial Examiner Lipscomb: You are objecting?

Mr. Brodkey: Oh, yes, asking him whether the results would be the same if the instant succinate had been used, I think that is objectionable, your Honor.

Mr. Callaway: Well, now, I think the Doctor has conducted enough studies on tissues metabolism to, certainly, be allowed an opinion, and that is what I am asking him for.

Mr. Brodkey: Generally, I should say yes. But, specifically, the Doctor, in this case, used something and made a study and claims that he found out something from that study.

Trial Examiner Lipscomb: Obviously, his answer, though, will constitute an opinion and to the extent that his opinion is relevant I think he should be allowed to
111 answer the question.

Mr. Brodkey: I think we should except to that ruling.

Trial Examiner Lipscomb: Your exception is duly noted.

The Witness: While sodium succinate is added, the sodium, which is the cation, is regarded with respect to the whole metabolism of the succinic acid to have no significance.

One might add it as ammonium succinate, one might add it as calcium succinate, in fact, fortunately, in our solutions, calcium was present, so that, when one adds calcium succinate as a salt it does not just go into solution and calcium succinate just stay together. It dissociates, and all of your ions, all of our ions in solution dissociate.

So that, when calcium is in solution, there is an equilibrium between the calcium and succinate, between the sodium and the succinate, between any of the cations in solution, so it does not make any difference which you had and, for the record, calcium was present in the solutions.

Q. Now, Doctor, from your studies, do you know of any condition of which it would be necessary or desirable to administer succinate in order to insure normal or adequate functioning of any enzyme system?

Mr. Brodkey: I believe that question was asked 112 and aswered before, was it not?

Mr. Callaway: It was not, not in that form, your Honor. I have changed it. I asked him was there any scientific evidence. Now, I am asking it in this manner to meet their objection.

Trial Examiner Lipscomb: Will you read that?

(The reporter read the following question:

"Question: Now, Doctor, from your studies, do you know of any condition of which it would be necessary or desirable to administer succinate in order to insure normal or adequate functioning of any enzyme system?")

By Mr. Callaway:

Q. Now, I will take out from your studies and just ask the question do you know of any conditions?

A. No.

Q. For which it would be necessary or desirable to administer succinate in order to insure normal or adequate functioning of any enzyme system?

A. From my own studies, and from my assessments of the literature dealing with this problem, I know of none.

Mr. Brodkey: Well, now, I am going to object to assessment of literature. The Doctor has indicated none particularly.

Mr. Callaway: Well, he objected a little while ago 113 when he did indicate so. He is trying to ride both sides.

Trial Examiner Lipscomb: The objection is overruled.

The Witness: I know of none.

By Mr. Callaway:

Q. You have already answered.

A. Very well.

Q. Now, Doctor, from your knowledge of tissue metabolism, would you say that salicylates will correct, restore to normal or maintain any enzyme system that is not functioning normally?

A. No.

Q. Doctor, from your knowledge of tissue metabolism, would say that combinations of succinate, as calcium succinate, and salicylate, as aspirin and manganese salicylate, will correct, restore to normal or maintain any enzyme system that is not functioning normally?

Mr. Brodkey: I object to that question, the same reason as heretofore, that there has been no showing that the Doctor had had any experience with that combination.

Trial Examiner Lipscomb: Objection overruled.

Mr. Brodkey: Exception.

Trial Examiner Lipscomb: Exception will be noted.

Answer the question.

The Witness: Prefacing my answer by a statement that what I say is based on my opinion, that the com-
114 bination of the salicylate and succinate ions represents no difference in terms of normal tissue metabolism than does each of these ions separately, I would say that the combination could not be expected to correct any enzymatic defects.

By Mr. Callaway:

Q. Or restore it to normal, or maintain it?

A. Or restore it to normal or maintain it.

Q. Now, Doctor, how must succinates be administered? That is, by what route must it be given to a patient in order to secure a succinate effect?

A. Owing to the unfortunate habit of the liver of doing a whole lot of things to things that are taken by mouth, succinate taken by mouth is converted into sugar. It is converted to sugar in the liver so that it would represent a form of administration which would be highly unfavorable, if not completely incompatible with the obtaining of a succinate effect by the development of the concentration in the blood. Now, that is rather involved. What I mean is that succinate has been shown, when taken by mouth, to be converted one hundred per cent into sugar and I made some estimates, I do not know whether they are appro-

priate, of the amount of sugar that would be provided by the succinate which is called for or recommended to be taken daily, of the preparation with which we are concerned.

Point 5: The six tablets of Imdrin, which are rec-
115 ommended daily, would be converted into this much sugar (indicating) which is equivalent to the sugar in that amount of bread (indicating). So that, in order to obtain—

Q. Just a minute. Let me see if I understand you. Let us have—

Mr. Callaway: Will you mark these for identification.

(Items referred to were marked Commission's Exhibits 35 and 36 for identification.)

Mr. Brodkey: We did not know anything about those. Are you going to take those up in your examination?

Mr. Callaway: Yes.

Mr. Brodkey: All right.

By Mr. Callaway:

Q. Now, Doctor, you are familiar with the formula for Imdrin as set forth in the complaint and in directions for use, are you?

A. Yes, I am.

Q. Now, I have understood you to say that the amount of succinate obtained from the daily recommended dose of Imdrin would all be turned into sugar by the liver?

A. That is right.

Q. Now, I hand you here Commission's Exhibit No. 35 for identification, which is a bottle, as I understand it, containing a small amount of sugar.

A. It contains .56 grams of sugar.

116 Q. Now, that is the net effect—

A. The sugar equivalent.

Q. The sugar equivalent of what the body would obtain from calcium succinate in a daily dosage of Imdrin as recommended?

A. Six tablets of Imdrin a day.

Q. Per day?

A. Yes.

Q. Now, I show you Commission's Exhibit No. 36 for identification, and ask you what that is?

A. That is a piece of bread which would provide the same amount of sugar as provided by the succinate.

Q. And do I understand you to say that the sugar pro-

vided by the succinate would be all that would be provided after it passed through the liver?

A. That is correct.

Mr. Brodkey: Counsel, what is the purpose of all this? I do not see what you are getting at here and I feel that an objection is going to be in order. Perhaps we can iron it out first.

Trial Examiner Lipscomb: Just a moment.

Off the record.

(Discussion off the record.)

Mr. Callaway: Now, then, I am offering in evidence Commission Exhibits 35 and 36, and I am asking that they be marked.

117 Mr. Brodkey: I am objecting to their receipt in evidence on the theory that those are unnecessary demonstrative or real evidence as we may choose to call this experiment, since the Doctor has indicated completely that he is able to explain everything involved in this attempted demonstration, that the objects involved have weights and other description to which reference can be made, that there is no logical basis for relevancy in so far as proof of the Doctor's hypothesis is concerned, and it still would tend to prove no issue in this case.

The connection between it and the act of eating a given amount of bread is not at all apparent.

I do not see that the conclusion which follows from the use of this experiment would relate to the issues in this case in any manner.

Mr. Callaway: This presents, your Honor, a visual idea of what one gets from the calcium succinate in a daily dose of Imdrin and in that way I think it is very pertinent and I insist on it going in.

Trial Examiner Lipscomb: Although the tendered evidence is somewhat unusual in that it is a visual demonstration of oral explanation, I see no harm in demonstrating to the senses of the Trial Examiner and to the Commission in more ways than one certain points. I see therefore no valid reason why it should not be received in

118 evidence and it is so received.

(The bottles referred to, heretofore marked for identification as COMMISSION'S EXHIBITS NOS. 35 AND 36, were received in evidence.)

Mr. Gettleman: Exception.

Trial Examiner Lipscomb: Your exception is noted.

By Mr. Callaway:

Q. Now, from what you have said, Doctor, I understand that when succinates are taken by mouth they do not get into the blood that circulates, generally, through the body, is that correct?

A. Right.

Mr. Brodkey: Will you read that last question?

(The reporter read the question as follows:

"Question: Now, from what you have said, Doctor, I understand that when succinates are taken by mouth they do not get into the blood that circulates, generally, through the body, is that correct?")

Mr. Brodkey: You said right?

The Witness: Yes.

By Mr. Callaway:

Q. Now, Doctor, I want to read a statement to you from Respondents' Exhibit No. 31:

"For aid in insuring adequate functioning of the vital enzyme systems (biochemical catalysts) of the blood and bones, manganese and succinate have been scientifically combined for maximum effect."

Now, Doctor, in your opinion, is that statement supported by any scientific evidence?

119 A. I have to break down that statement right from the very start and ask myself what evidence there is in the literature dealing with Imdrin.

Would you read that?

Q. Let me just give you this exhibit—

Mr. Goding: I am going to object to this. I think it was a very clear-cut question, something that was read by counsel to the witness.

Now, what the Doctor may have read in the Imdrin literature elsewhere, I said, is entirely irrelevant as to what his answer should be.

Mr. Callaway: Now, his answer, of course, is based on his knowledge of the formula of Imdrin and the directions for use as set forth in the complaint and admitted in the answer, with which he says he is familiar.

Is that correct, Doctor?

The Witness: That is correct.

Mr. Goding: I do not get the sense of the question that way. I think the question was directed to the literature in this regard. Now, why there is any need for considera-

tion of the formula of this particular product or what its directions for use are, I think, obviously, is so remote that it should not be considered.

Trial Examiner Lipscomb: Mr. Reporter, will you read to the Doctor, again, the question, if you can find it.

120 (The reporter read the question as follows:

"Question: Now, Doctor, I want to read a statement to you from Respondents' Exhibit No. 31:

" 'For aid in insuring adequate functioning of the vital enzyme systems (biochemical catalysts) of the blood and bones, manganese and succinate have been scientifically combined for maximum effect.'

"Now, Doctor, in your opinion, is that statement supported by any scientific evidence?")

Mr. Brodkey: I think it calls for no more than a yes or no answer.

Trial Examiner Lipscomb: Doctor, can you answer the question previously with a yes or no, or with an explanation?

The Witness: I know of no scientific evidence that supports any of those statements, nor do I, on the basis of my own experimental work—

Mr. Goding: He is going beyond the question now.

Trial Examiner Lipscomb: All right, Doctor, stop there.

The Witness: Very well.

Mr. Goding: I move that that last be stricken out, about his experiments.

Trial Examiner Lipscomb: It will be stricken, the last phrase.

121 The Witness: Could I go off the record?

Trial Examiner Lipscomb: Off the record.

(Discussion off the record.)

By Mr. Callaway:

Q. Now, Doctor, in your opinion, will Imdrin taken as directed, correct and restore to normal the vital enzyme systems of the blood and bones?

A. On the basis of my own work and on bone metabolism, if I may specifically go to each of these breakdown questions, I can tell you the following: That the system with which succinate, or succinic acid is normally concerned, that is a citric acid cycle, can be entirely deflected or inhibited from operating.

Mr. Goding: Just a moment, Doctor.
Mr. Callaway: Let him finish.
Mr. Goding: No, I am sorry.
I think that the question calls for a very simple and
irect answer. It calls for no explanation.
May I have the question read?
Trial Examiner Lipscomb: Yes, will you read the ques-
ion, please.
(The reporter read the question as follows:
"Question: Now, Doctor, in your opinion, will Imdrin,
aken as directed, correct and restore to normal the vital
enzyme systems of the blood and bones?")
22 Mr. Goding: I think that calls for a yes or no an-
swer without marching into a dissertation.
Mr. Callaway: He is entitled to give the basis of his
pinion.
Mr. Brodkey: That was not asked.
Trial Examiner Lipscomb: The basis was not asked for,
don't believe. I think the Doctor should first answer the
uestion and then the Examiner can ask further questions
' he desires.

By Mr. Callaway:

Q. Now, then, do you want to give the basis for your
pinion?
A. I had previously described certain experiments deal-
ng with tissues and I have, since those experiments, been
nterested in the relation of succinic acid and the citric
cid cycle of which it is a member, in bone metabolism,
nd the deposition of calcium in bone. It therefore is rele-
ant to the present problem.
I can state, from my experiments, that normal deposi-
on of calcium can go on in bone, in cartilage, which is
ne growing part of the bone, in vitro. Those are the
onditions of my experiment, under conditions in which
ne participation of the citric acid cycle, of which succinic
cid is a member, is completely abolished.
Q. Now, Doctor, in your opinion, will Imdrin, taken
23 as directed, correct and restore to normal the vital
enzyme systems of the body?
Now, the other was directed to the vital enzyme of the
lood and bones. This is directed to the vital enzyme sys-
ems of the body.
A. In my opinion it will not.

Q. And the same basis of your opinion is what you formerly stated?

A. My previous testimony.

Q. Doctor, in your opinion, will Imdrin, taken as directed, insure normal and adequate functioning of the vital enzyme systems of the body including those of the blood and bones?

A. No.

Q. And the same basis of your opinion is what you have stated before?

A. Yes.

Mr. Callaway: Might we have about a two or three-minute recess?

Trial Examiner Lipscomb: Yes, we will have a short recess.

(There was a short recess.)

By Mr. Callaway:

Q. Doctor, the directions for the use of this preparation, Imdrin, show that it is to be taken by mouth?

A. Yes.

124 Q. In your opinion, how must succinate be administered to obtain a succinate effect?

A. Either intramuscularly, intraperitonially or intravenously.

Q. And what does intraperionially mean?

A. In the abdominal cavity.

Q. You mean by injection?

A. Yes, and in amounts which—

Q. Wait just a minute. Now, Doctor, have you calculated the amount of succinate which must be introduced intravenously, or according to these other methods, those which you have stated, in the human body, to obtain a succinate effect?

A. I have calculated the amounts that would be expected to obtain the succinate effect of stimulating respiration. These amounts would require that a concentration or concentrate in the organism of approximately 88 milligrams of succinic acid should be distributed in the blood stream and tissue places. On the basis of this calculation it comes to—and also on the basis of our studies which show the transitory effect of succinate, that is, each amount of succinate having a stimulating effect on respiration lasting about one hour.

On that basis I have calculated that 193 grams of suc-

cinate—of the succinic acid radical, would have to be
125 injected over 24 hours intravenously in a 60 kilogram man, which is an average man, or about 345 times the amount of the succinic acid in the daily recommended dose of Imdrin; if that dose should escape the conversion into glucose by the liver.

Mr. Goding: That is transitory effect, the last one, 93 grams?

The Witness: 193.

Mr. Goding: That is what you call transitory?

The Witness: That would be a sustained effect.

Mr. Goding: Sustained effect?

The Witness: Yes.

Mr. Goding: Did I hear you say the word "transitory?"

The Witness: Yes, I said transitory with effect.

Mr. Goding: To the 88 milligrams?

The Witness: The 88 milligrams exerts an appreciable effect on respiration for about an hour and then wanes, so that I, then, assume that that would have to be repeated every hour.

Mr. Goding: I see.

The Witness: For 24 hours.

Mr. Goding: I see.

By Mr. Callaway:

Q. Now, you probably answered this, but would
126 that effect, when achieved, be beneficial or deleterious?

A. As I pointed out before, the stimulation of respiration provides no useful energy to any of the processes that we have examined, and which I have previously detailed, and, in fact, at that concentration, adverse effects on all these processes were a feature.

Mr. Callaway: That is all.

Cross-Examination by Mr. Gettleman.

Q. Doctor, you state that you were at Bellevue Hospital until 1932, is that right?

A. That is correct.

Trial Examiner Lipscomb: Off the record.

(Discussion off the record.)

By Mr. Gettleman:

Q. What were your duties while you were at Bellevue Hospital, Doctor?

A. I participated in the teaching of medicine to the Cornell students, the conducting of research in diseases of metabolism and to the care of patients in the ward of the second medical division.

Q. And at the present time you are teaching at Cornell, is that not right, Doctor?

A. Yes.

Q. What subjects do you teach?

127 A. My main teaching is concerned with diseases of the metabolism and the ductless glands. The endocrine glands.

Q. Diseases of metabolism?

A. Yes.

Q. And is that called endocrinology?

A. Well, metabolism is a broader term. The endochrines came up a little later in evolution.

Q. And do you teach anything else, Doctor?

A. General medicine, internal medicine.

Q. Will you tell us, Doctor, if you know, what the quantitative and qualitative formula of Imdrin is, without looking, just as you are?

Mr. Callaway: Just a minute.

Mr. Gettleman: Just a moment, Mr. Callaway. He predicated—

Mr. Callaway: I object.

Mr. Gettleman: Wait until I finish.

Trial Examiner Lipscomb: Finish your question.

Mr. Gettleman: I wanted to say this: That the Doctor testified, in detail, about the directions and the formula of Imdrin. He even testified to the point of getting these two exhibits, whatever they are, Nos. 35 and 36. Now, I want to show, I want to find out how well this Doctor knows the qualitative and quantitative formula of Imdrin that he has been basing all this testimony on, and I

128 think I have a right to do it.

Trial Examiner Lipscomb: You have not been denied the right.

Mr. Callaway: Now, I object to that question for the simple reason that the Doctor—I have discussed this case with the Doctor not once but several times. I have been over it with him and have left with him the complaint set-

ting forth the formula for Imdrin and which is admitted in respondents' answer.

He had before him the formula as set forth in the complaint. He had it before him when these calculations were made.

Now, then, to try to come up here and spring something and say, "Do you remember?"—I think it is entirely unfair.

Mr. Gettleman: Nobody is trying to spring anything. I want to get that point straightened, if the Examiner please.

Trial Examiner Lipscomb: No need for further argument, the objection is overruled and the question may be answered.

The Witness: Qualitatively, as I have recalled it, I have written it down and I would feel that I should have recourse to it for specific amounts,—

Mr. Gettleman: If the Examiner please, I have
129 asked a very simple question. I want a direct answer.

The Witness: Qualitatively?

Mr. Gettleman: Without extraneous embellishments.

By Mr. Gettleman:

Q. Will you tell us, if you know, what the qualitative and quantitative formula of Imdrin is?

A. Acetylsalicylic acid, manganese salicylate, calcium succinate, thiamine, caffeine—I think that is all.

Q. Now, will you give us the quantitative formula, if you please?

A. There is .16 grains of caffeine; 1 milligram—

Q. Just go slow, please.

A. .16 grains of caffeine; 1 milligram of thiamine; 2.3 grains of calcium succinate; 1.5 grains, I think, of manganese salicylate; and 1.—I am not absolutely certain about the acetylsalicylic acid, whether it is 2.3 or 1.6.

Q. 2.3 or 1.6?

A. That is correct.

Q. Doctor,—

A. When I did the calculations, I had the figures before me.

Q. Doctor, you told us about some extensive studies that you performed with sodium succinate. Is that not right?

A. Yes.

Q. That was used during the war, for which you were cited?

A. Yes.

130 Q. That had mainly to do with shock, was that not right?

A That is not quite so.

Q. Well, you will explain to us what it was?

A. The direction of our goal was shock, but it was necessary to learn the basic metabolism or role of succinate in the processes that we were attempting to overcome before it could be applicable. We start out by working toward shock and hoping that what you do was going to be helpful.

Q. And who were your subjects at the time?

A. Animals.

Q. Did you perform those experiments on any humans?

A. No.

Q. In other words, the experimentations you conducted were on animals only, in which you used sodium succinate, is that not right?

A. That was deliberate. Yes, that is so.

Q. You have answered the question, Doctor.

A. Very well.

Mr. Callaway: Well, now, wait a minute. Let him amplify the answer if he wants to.

Mr. Gettleman: There is no need for voluntary explanations.

Mr. Callaway: He is entitled to give any explanations he wants to.

Mr. Gettleman: If I ask him.

131 Mr. Callaway: No, no. He is entitled to, anyhow.

Mr. Gettleman: He is not, he won't get any special privileges.

Trial Examiner Lipscomb: Continue with your examination.

Mr. Callaway: Wait just a minute, your Honor, I think it definitely is a rule that if he is asked a question that calls for a yes or no answer, or for an abbreviated answer, and he feels like it, that the abbreviated answer, or the yes or no, does not fully explain what he means, then he himself is entitled to give any explanation which he thinks necessary.

Trial Examiner Lipscomb: I agree with you.

Mr. Callaway: And I think the Doctor ought to understand that.

Mr. Gettleman: That is, providing, I think, that the explanation is necessary to enlighten us. Not if it is purely voluntary and something that will not lead us anywhere.

By Mr. Gettleman:

Q. Doctor, let me ask you this—

A. Am I permitted to elaborate?

Mr. Callaway: Yes.

Trial Examiner Lipscomb: If you feel that you need to, you may.

Mr. Gettleman: I will object to any further state-
132 ment by the Doctor. I think he has answered the question, if the Examiner please.

Trial Examiner Lipscomb: If he wishes to explain, he may.

Mr. Gettlemen: I will except to the ruling.

Trial Examiner Lipscomb: It is noted.

The Witness: The extreme difficulty of clarifying the exact mechanism of the operation of succinate in the human, because of the inability to study enzyme systems in the human, except under the Hitler regime, made it imperative that we go to animals in order that we may exactly study, and specifically study those enzyme systems in those operations and determine the effects of succinate.

By Mr. Gettleman:

Q. And all of those experiments were done on animals, is that not right?

A. It was what I previously stated.

Q. I wanted to get that straight.

A. That is right.

Q. Doctor, you wrote a paper called "Participation of hepatorenal vasotropic factors in experimental renal hypertension."

Could you tell us, in a sentence or two, what that article was in reference to?

A. We have discovered, in our laboratory, that
133 there are two principles previously unrecognized. One originating in the liver, which we call V E M, and one originating in the kidney, which we call V E N. V identified it as ferritin, which appeared to exert a powerful control over the capillary bed.

These substances have opposite actions on the capillary bed of such a nature as to suggest that they are the regulating mechanism by which the capillaries bring about the exchange of fluid between the blood vessels and all tissues.

These substances have been found to participate in the evolution of the shock syndrome. In early shock the kidney elaborates this vasoexciter substance, the V E N, acts on the terminal vascular bed and produces vasoconstriction of the pre-capillary sphincters rendering the capillary bed skinic, allowing the blood to go from artery to vein through certain preferential channels.

This is the initial compensatory reaction to blood loss. The vasoexciter being produced by the hypoxia of the kidney, which follows blood loss and renovasor constriction.

When the shock syndrome—

Q. Doctor, I think you have given us an idea. Now, I would like to ask that same question about another article you wrote, but could you confine it—I mean, if it has to do with the liver, or with hypertension?

134 A. Yes.

Q. Could you just give us four or five or six words describing what it is, briefly?

A. Yes.

Q. Doctor, you wrote an article called "Heptorenal factors in circulatory homeostasis." Do you remember that article?

A. Yes.

Q. What did that have to do with?

A. That had to do with the same subject that these two substances, which we are proud to have discovered in our laboratory, and which give every evidence of helping us to solve the problem of hypertension, constituted a system by which two opposing factors operate on the capillary bed, which we believe to be the most important part of the circulation. One to open it up, as it were, and one to close it. This article dealt with certain of the implications of shock, hypertension and so on.

Q. Doctor, do you remember the Journal of Biological Chemistry, in 1948? You wrote another article in conjunction with A. Mazur?

A. Yes.

Q. "Heptorenal factors in circulatory homeostasis"?

A. Right.

Q. Now, would that be the same subject matter?

A. That is not the full title of the paper.

135 Q. "The identification of the hepatic vasodepressor substance, VDM, with ferritin."

A. Yes.

Q. Would that deal with the subject matter that you have just discussed?

A. That is right.

Q. Roughly, would you tell what it is, pointing out any differentiation?

A. In that paper we were actually able to crystalize the material.

Q. Doctor, you also collaborated in an article called "Hepatorenal vasotropic factors in blood during chronic essential hypertension in man."

Could you tell us whether or not that dealt with approximately the same subject matter?

A. That is right. This demonstrated the existence of the same disturbances involving these two factors in man as we have previously shown in experimental hypertension.

Q. Doctor, you wrote an article entitled "Hepatorenal factors in circulatory homeostasis. Vasotropic content of blood in chronic hypertension."

Now, was that the same subject matter?

A. That was the same subject matter with some additions which I can dilate on for you, if you like.

Q. Can you tell us what additions?

136 A. Who are the co-authors there, and I do not think you have the whole title right?

Q. Yes, I think I have. "Vascular changes in mesentery in renal hypertension in rats."

A. Oh, yes, that is the one.

Q. Zweifach, Rosenfeld, and yourself?

A. That is right.

Q. What did that have to do with?

A. This had to do with a very interesting phenomenon which had not been previously described. We showed that in the rat that is made hypertensive by putting a bit of silk around the kidney so that there is nephritis with hypertension. Capillaries become enormously hyperplastic. That is, they increase in number, and the interest in that lies in the fact,—not only increase in number, but they become much more reactive to certain test substances such as the kidney vasoexciter principle, such as adrenalin dropped on it, and the importance of that derives from

the fact that it is on these blood vessels that have become so hyperplastic that these substances with which we are concerned, operate, and we have, more recently, shown that this vascular change is probably always present in the human, by studies on the ocular—on the conjunctival vessels of the human.

They are also hyperplastic, just as the rat. They are also more sensitive to adrenalin.

137 Q. The conjunctive refers to the eye?

A. That is right, to the eye.

Q. Doctor, in your article entitled "Hepatorenal factors in circulatory homeostasis. Relation of renal VEM to vascular compensation in shock." Does that deal substantially with the same subject matter?

A. Could you read the authors there?

Q. Yes, Zweifach, Furchgott, and yourself. That dealt with substantially the same?

A. Yes, the same thing.

Q. Now, Doctor, do you recollect the article entitled "Hepatorenal factors in circulatory homeostasis. VEN and VDM Mechanisms in nutritional cirrhosis in rats."

A. Yes.

Q. Now, did that have to do with the liver of rats?

A. That had to do with the fact that, if you do not give animals enough protein their kidney loses the capacity to form this renal vasoexciter VEM.

Q. And do you remember collaborating with Baez, Mazur, and Shorr in reference to an article entitled "Hepatorenal factors in circulatory homeostasis. Antidiuretic action of liver VDM concentrates."?

A. Very distinctly. It has just been published and it refers to the fact that ferritin, which is the hepatic vasodepressor seems to have an enormously important role

138 in the edema formation, dropsy, in man. If you inject the ferritin into the blood stream of an animal, it stops the urine flow and reduces, therefore, his antidiuretic, just like the posteric-pituitary, and we have since found that, in all cases of human edema, heart failure, cirrhosis, nephrosis, that ferritin is present in the blood stream in abnormally high amounts.

Q. And will you tell us, in your article entitled "Hepatorenal vasotropic factors in blood of patients with essential hypertension. Factors regulating blood pressure,

Transactions of the Second Conference." Do you remember that?

A. Yes.

Q. Do you remember that that substantially treated the same subject matter?

A. What that did was to show what, to us, and I think to all of us, is important, that the experimental findings in animals, whether you induce a type of hypertension which leads to a very regular sequence of events in which first the kidney system forms VEM, becomes deranged, then the liver forming VEM becomes deranged, and these materials appear in the blood in a regular sequence and remain throughout, that so in the human, exactly the same sequence of events occurs.

Q. What part of the body, at that time, were you particularly interested in? Was that liver work?

A. Liver, kidney. We have put catheters down to
139 the kidney veins, catheters through the blood vessels, into the liver veins, and we have analyzed the blood. We have analyzed the tissues of humans, we have taken kidney tissue out of humans, we have taken adrenal tissue out of a human, so that we have studied humans in the same way with respect to these substances and found that all the data that we obtained from the animals is applicable to the human situation as well.

Q. The experiments you performed actually were with animals, is that right?

A. Oh, no, humans.

Q. With humans also?

A. Oh, yes.

Q. I did not understand that.

A. Both humans and animals. That operation they have humans exposed to. I have had small pieces of kidney removed. Small pieces of adrenal removed and they have been studied in the same way.

Q. Doctor, was your article published in 1948 entitled, "Hepatorenal factors in circulatory homeostasis. Quantitative immuno-chemistry of ferritin and apoferritin"—did that deal substantially with the same subject matter, kidney, livers and so forth? Just as you have cited? Perhaps just a different phase?

A. What this did was enable us to identify ferritin in the blood, where it is present in such small amounts
140 that it is chemically impossible to identify it otherwise. Very fortunately we can produce an anti-serum.

You get an anti-serum for the ferritin and that can be reacted with the blood and wipe out the effect of the ferritin and hence establish that what you have in blood in these submicroscopic amounts is indeed a substance that we are dealing with.

Q. And was your article in which you collaborated with A. Mazur, entitled "Hepatorenal factors in cirulatory homeostatis. Chemical properties of ferritin and apoferritin," related to the same subject matter?

A. That is. That is a paper in which we have ascertained all of the amino acids of ferritin.

Q. Did you use animals or humans?

A. This is using crystals.

Q. Pardon me?

A. Crystals.

Q. You used no subjects in that?

A. That is right.

Q. Now, will you tell us, Doctor, in reference to the article you had published in 1949 entitled "Hepatorenal factors"—

Mr. Callaway: Just a minute. May I suggest, is this a test of the Doctor's memory, or his qualifications as an expert witness? I would like for counsel to enlighten 141 me along that line.

Mr. Gettleman: I just want to find out whether this man is qualified to testify about the subject matter we have today here under trial.

Mr. Callaway: I think you are entitled to find that out. But it looks to me like a test.

Mr. Gettleman: When I am through finding out which article, together with the subject matter in every article he wrote, I hope to disqualify this witness completely.

Mr Callaway: I imagine you'd have that hope.

Mr. Gettleman: You asked me my purpose and I have given it to you.

The Witness: Are you sure you haven't all of my older writings?

Mr. Gettleman: If I haven't, you will give them to me, won't you Doctor?

The Witness: I suppose so.

By Mr. Gettleman:

Q. Now, will you answer that, Doctor?

A. I think I did. I said it was a crystal and ferritin.

Q. Now, will you tell us, Doctor, very briefly, so we can

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cut this down, whether or not your paper, in which you collaborated with—entitled "Hepatorenal factors in circulatory homeostasis. Conditions leading to aerobic
142 formation of VDM by liver," dealt substantially, or one phase or another related to it, in reference to the same subject matter that you are talking about?

A. Correct, yes, it did.

Q. And would your answer be the same in reference to the paper entitled "Hepatorenal factors in circulatory homeostasis. Low protein diets and renal VEM formation."

A. That I collaborated with Payne?

Q. Correct. And will you tell us whether or not your answer would be the same if reference is had to the paper that you collaborated with B. W. Zweifach, entitled "Hepatorenal factors in circulatory homeostasis. Effect of adrenalectomy on renal VEM system and hypertension"?

A. That is an extension of our studies in which the relation of the adrenal gland to this kidney principle was clarified.

Q. And what subjects were used there, if you remember, Doctor?

A. Those were animals.

Q. Those were animals?

A. Yes.

Q. Now, will you tell us, Doctor, if your answer would be the same in reference to the article you published in 1949, entitled "Hepatorenal factors. Biological fractionation of humoral VEM and VDM in renal hypertension?"

143 A. That would apply to—

Q. Do you remember what subjects you used there?

A. Those were animals, but at a later stage, humans. In fact, in one of the studies you cited above, humans were used for the same type of procedure.

Q. You have in this article a notation that dogs were used. ould that refresh your memory?

A. I do not have to have it refreshed.

Q. That would be dogs, then?

A. Yes.

Q. Now, Doctor,—

Mr. Callaway: Now, wait just a minute. I believe you have skipped some on the effect of succinate, haven't you?

Mr. Gettleman: No, I will get every one of them in.

Mr. Callaway: Let me call your attention to an article

published in 1948 on the effect of succinate on respiration and certain metabolic processes of mammalian tissue at low oxygen tensions in vitro.

Mr. Gettleman: I will come to that.

Mr. Callaway: It looks like you are picking out everything else except the subject matter we have before us today.

Mr. Gettleman: My dear Mr. Callaway, I am doing this in a very logical form. I am going right down this
144 entire list. I am not skipping around.

Mr. Callaway: Where are you then?

Mr. Gettleman: I happen to be on the list that you presented.

Mr. Callaway: Let me see where, page 2?

The Witness: That is just since 1948, Mr. Callaway.

Trial Examiner Lipscomb: Off the record.

(Discussion off the record.)

By Mr. Gettleman:

Q. Doctor, will you tell us if your article entitled "Hepatorenal vasotropic factors in essential hypertension and in eclampsia" dealt with some branch of the same subject matter?

A. Yes, human, men and women.

Q. And will you tell us whether or not your article entitled "Basic mechanisms in peripheral vascular homeostasis," which included "Factors regulating blood pressure, Transactions of Third Conference." Will you tell us whether that embraced substantially the same subject matter?

A. Yes, humans and animals, men and women.

Q. Will you tell us, Doctor, whether your article entitled "Recent findings concerning the role of the liver and kidney in circulatory homeostasis" embraced substantially the same subject matter?

A. Who were the co-authors?

145 Q. Zweifach, Furchgott, Mazur, Baez, and Payne.

A. Yes, that is right. They did, it did.

Q. What subjects did you use then?

A. Humans and dogs, to my recollection.

Q. Doctor, will you tell us whether or not your article published this year entitled "Humoral factors related to peripheral vascular homeostasis," in which you collaborated with Zweifach, and "Menstruation and its disorders," dealt with substantially the same general subject matter?

A. That is right, it did.

Q. And will you tell us whether or not your article entitled "A quantitative immunochemical study of ferritin and its relation to the hepatic vasodepressor material," dealt with substantially the same subject?

A. It did.

Q. And will you tell us, if you remember, what subjects you performed those experiments with?

A. Just me. Could you read that particular paper again?

Q. Yes. "A quantitative immunochemical study of ferritin and its relation to the hepatic vasodepressor material."

A. Both humans and animals.

Q. Will you tell us whether or not your article entitled "Relation of the adrenals to alterations in the renal VEM mechanisms in experimental hypertension," embraced, generally the same subject matter?

A. Yes, it did.

Q. Will you tell us whether your answer is the same in reference to the article you published in 1950, this year, entitled "The role of hepatorenal vasotropic principles in experimental shock," "Research in Medical Science." Did that embrace, generally, the same subject matter?

A. Yes.

Q. Do you remember what subjects you used there? Was it animals or humans?

A. Animals.

Q. Animals?

A. Yes.

Q. Do you remember which ones?

A. Dogs, rabbits and rats.

Q. Doctor, will you tell us whether or not your article entitled "Desoxycorticosterone hypertension in relation to hepatorenal mechanisms," dealt with substantially the same subject matter?

A. It did, except that it not only invoked an adrenal steroid, hormones of the adrenal cortex—

Q. And what organs were you interested in, in that paper?

A. ell, we were interested in all the indices, the effect—you see, we were comparing the type of hypertension induced by this hormone with all of the—with the hypertension that we think is characteristic of human hypertension.

147 Q. That is blood pressure?

A. No, that is high blood pressure.

Q. Yes, high blood pressure.

A. But, in it we studied blood vessels. We studied blood and kidneys and liver and so on.

Q. And will you tell us, Doctor, whether your answer is the same with relation to the article you had published in which you collaborated with A. Mazur, entitled "Relation of sulfhydryl and disulfide groups in ferritin to its vasodepressor activity." Was that substantially the same?

A. Well, this actually, we were actually able to show exactly what portions of the ferritin molecule, the sulfidral groups are responsible for its action in the blood vessels.

Q. And, Doctor, in reference to that study in which you collaborated with Baez, Mazur, in the article entitled "Hepatorenal factors in circulatory homeostasis. The antidiuretic action of the hepatic vasodepressor, VDM," did that deal substantially with the same subject matter?

A. That was the antidiuretic action of ferritin, yes, animals.

Q. That was on animals?

A. Rabbits and dogs.

Q. Now, Doctor, will you tell us whether or not your answer is the same to the article you had published entitled "Peripheral circulatory changes as criteria for
148 hemorrhagic shock therapy"?

A. That was not by me, that was by Zweifach. It came out of my laboratory.

Q. Did you have anything to do with it, Doctor?

A. No.

Q. In other words, although it is included on your list as being a paper that you published, really it is not?

A. Would you read the list of authors?

Q. Yes. Zweifach—that is the only name I see here.

A. Then I am not listed there. This is a bibliography of my laboratory work.

Q. Then you had nothing to do with that paper?

A. Except in a general directional way.

Q. But you did not write that?

A. That is right.

Q. That should be deleted from the list?

A. That is right.

Q. Doctor, will you tell us whether or not your paper entitled "Hepatorenal factors in circulatory homeostasis. Tissue origins of the vasotropic principles, VEM and VDM,

which appear during the evolution of hemorrhagic and tourniquet shock." Did that substantially embrace the same subject matter?

A. Yes.

Q. And, Doctor, is your answer the same to the
149 article entitled "Studies on VEM and VDM in blood in relation to renal hemodynamics and renal oxygen extraction in chronic congestive heart failure"?

A. Correct. That was on humans. All humans, heart failure patients.

Q. And, Doctor, will you tell us whether or not your answer is the same to the article you had published entitled "The antidiuretic action of the hepatic vasodepressor ferritin and its occurrence in conditions associated with antidiuresis in man"?

A. That is right.

Q. I presume you used—

A. Humans and animals.

Q. And animals?

A. That is right.

Q. Doctor, you have an article listed here entitled "Chemical properties of ferritin and their relation to its vasodepressor activity. Submitted for publication." Has that been published as yet?

A. It has been accepted.

Q. Not published as yet?

A. Not published as yet.

Q. Would that—does that deal with substantially the same subject matter?

A. That is, yes, the chemical identity of the portions
150 of the ferritin molecules are effective.

Q. And you have another one submitted for publication entitled "The relation of sulfhydryl groups in ferritin to its vasodepressor activity"—or, rather, "The relation of sulfhydryl-disulfide groups in ferritin to the hepatic activation and inactivation of its vasodepressor properties"?

A. That is right.

Q. Did that deal with substantially the same subject matter?

A. Correct, we were able to show what we were able to do with chemicals what the liver was actually doing.

Q. Is the article mentioned above related to the liver in a great many instances?

A. They relate to a very specific function of the liver.

Q. Of the liver?
A. Yes.
Q. Do you know whether or not that has been accepted for publication, Doctor?
A. That has been accepted for publication.
Q. But it has not been published as yet?
A. Not as yet. General biological chemistry.
Q. Doctor, you have an article entitled "The participation of VEM and VDM mechanisms in drum shock and in the development of 'Resistance' to drum trauma." Now, that article has not been published?
A. It has been accepted for publication.
151 Q. It has not been published as yet?
A. That is right.
Q. And did that generally deal with the same subject matter?
A. Yes, it dealt with the same subject matter. It opened up a new—it opened up how we develop our resistance to shock.
Q. Doctor, will you tell us whether your answer would be the same with reference to the article that you wrote but which I see has not been published, but which is entitled "Histochemical changes as revealed by tetrazolium chloride in hypertensive kidneys of animals and man, in relation to renal VEM mechanism." Would that embrace substantially the same subject matter?
A. It has just appeared in the proceedings for the Society for Experimental Biology in Medicine, and it would deal with the same subject with a new approach, because this particular dye, tetrazolium, identified enzyme systems in the cell, when it is reduced, it is reduced to an insoluble red droplet and deposited right in the cell so that it offers, for the first time, a chemical identification of enzymatic activity which is measurable, as well as visible, and it shows distinct differences in the enzyme in the proximal convoluted tubular in the kidney in hypertensive man and hypertensive animals, which points to a locus of disturbance which we believe is basic to hypertension
Q. Doctor, in this list of articles that you were to
152 have published or were published by you in collaboration with others, there is one entitled "Peripheral vascular homeostasis in relation to anesthetic agents." The authors appear to be S. G. Hershey and B. W. Zweifach.

A. That is correct.

Q. You are not an author of that?

A. That is correct. I took a bibliography of the whole department and brought it down and you should delete those two, of which I am not an author.

Q. You are not a co-author of that?

A. That is right.

Q. And this should not be in this list?

A. That is right.

Q. And there is another article entitled "Predisposing action of anesthetic agents on the vascular responses in hemorrhagic shock," which was evidently written by Zweifach and Hershey and not yourself?

A. That is right.

Q. That, too, should not have been included in this list?

A. All of those articles, in which my name was not present, should be excluded. I explained that I took a departmental bibliography and brought it here. Wherever my name is, there I have been a co-author, where it is not, it should be excluded from the bibliography.

Q. Are you in private practice today, Doctor?

153 A. No.

Q. By shaking your head, you mean no, is that not right?

A. That is correct, I am not in private practice.

Q. Doctor, will you tell us how long you have been out of private practice?

A. I have never been in private practice.

Mr. Callaway: One minute. I think he should be allowed to explain what he means by private practice He does see patients at the hospital.

The Witness: We have nine thousand clinic visits a year in my clinic.

Mr. Gettleman: If the Examiner please, I think my question was a very simple one. Private practice ordinarily is meant what it exactly means, not institutional work or that work that is done when one is connected with a hospital or a school. I mean, seeing patients for pay, if that will describe it more adequately.

The Witness: Well, I get paid for seeing patients, but not individually. I get a salary which covers all of my activities.

By Mr. Gettleman:

Q. And that salary covers your seeing the patients in the hospital, is that not right?

A. That is right.

Q. You would not, in the terminology of a physi-
154 cian, term yourself in the private practice of medicine?

A. That is right.

Q. Doctor, did you have any personal—I will withdraw that.

Doctor, tell me, what personal knowledge, if any, have you had with the product Imdrin? By that I mean, did you ever prescribe it to anyone?

A. Never.

Q. You have no first-hand personal knowledge in that respect, have you?

A. That is right.

Q. When did you first become acquainted with the product, Doctor?

A. I think it was not more than, possibly, two months ago—except by radio.

Q. That is the answer.

A. About two months ago. Possibly a little more—about two months ago.

Q. Is that the first time you saw the directions accompanying the package, Doctor?

A. I think so, yes.

Q. Now, I have a list here, Doctor, that is to be copied into the record as if you had testified to them regarding articles you have written. There are some of the older articles having been written from 1924 up to that list that I just asked you about a few moments ago.

155 Mr. Callaway: When did that list you started questioning him a while ago start?

Mr. Gettleman: 1948.

By Mr. Gettleman:

Q. This is entitled "Bibliography." Do you remember?

A. Yes.

Q. Who got that up for you, Doctor? Who typed it for you?

A. My secretary.

Q. Under your supervision?

A. Yes.

Q. Now, in order to save time, will you tell us, Doctor,—

Mr. Gettleman: May I make a statement off the record?
Trial Examiner Lipscomb: Off the record.
(Discussion off the record.)
Mr. Gettleman: May we have a short recess?
Trial Examiner Lipscomb: We will take a short recess.

(A short recess was taken.)

By Mr. Gettleman:

Q. Will you answer the last question?
A. You asked me to describe the categories in which my work fell?
Q. Yes.
A. In 1925, as a student, I worked on the relation
156 of the adrenal glands to cholesterol metabolism. Then, when I joined Cornell, I did a series of studies, through 1926—from 1926 on to 1939, on various aspects of the metabolism of normal and diabetic tissues, including phlorihizin diabetes; phlorihizin being the tube by which we are able to learn the succinates.

At that same time I carried out similar studies on the respiratory metabolism of the tubercule bacillus. I believe the first studies of the metabolism of the tubercle bacillus was the subject of intensive work and this shows that the tubercle bacillus withstood the lack of oxygen very poorly and that was the means by which the tubercles choked off, the tubercle which is an agglomeration of tissues surrounded by fibrous tissue, choked off the actual bacteria themselves and prevented their spread.

Then, on the human, I proceeded to work on the metabolism of Graves disease, hyperthyroidism, and in that study I was particularly interested in the muscular weakness which they exhibited and was able to show that that was related to creatine phosphate, that being one of the high energy phosphates which we have subsequently studied with relation to succinic acid tablets.

Then I turned to the human and studied the metabolism of the ovarium hormones. Not only the ovarium hormones, but the male hormones and the pituitary hor-
157 mones that stimulate the pituitaries into activity.

Q. Doctor—

A. There I worked with Dr. Papanicolaou developing methods by which—determining the appearance of the vaginal secretions which were able to actually, for the first time in humans, get an exact measure of ovarium functions.

The hormones in humans influencing the mucosa of the vagina and changing the pattern of the cell throughout the menstrual cycle so that by staining and looking at it, you can see whether the hormones are being produced in normal amounts, or in abnormal amounts.

That method is now being applied all over the world to the quantitative evaluation of female disorders and for the administration of hormones in therapy.

In other words, you can quantitate. You have something to measure, which is one of the essences of good medicine. You have a medication to give. It must produce an effect, and if you can measure that effect, by an objective method, then you are all rid of all these placebo kind of effects in which you can get any kind of response on the part of a patient.

I developed a new technique for staining the smears by which a 35-minute method was changed to a 1-minute method, and then I went to a study of chemistry of hormones, as they are revealed by infrared analysis. You flash an infrared spectrum through a hormone and then
it absorbs, in different wave lengths, and in that way
158 you get a spectrum which permits the identification
of different hormones by this method.

I worked on the output of one of these synthetic hormones, stilbestrol, and with Dr. Mazur was able to show that it came out in the urine in the form of a conjugate with a substance, glycuronic acid, which is one of the ways that the liver helps to inactivity many substances.

Then I studied citric acid metabolism which is correctly related to the subject in question today.

Citric acid is the precursor of succinic acid, with which we are all concerned.

I was able to show that citric acid is excreted in the urine in a very typical pattern in the course of the menstrual cycle and that excretion is controlled by estrogenic hormones. Taking women without any menstrual cycle and injecting the hormones and studying the citric acid excretion in the urine.

I was also able to relate the level of citric acid in the urine to stone formation, showing that it acts as a bodyguard and that patients in whom citric acid production is very low are very prone to form stones, because citric acid and calcium form a complex—this time not just calcium succinate, but a real calcium ion which is very soluble, whereas calcium itself is an insoluble electrolyte.

Then, with the problem of stones in mind, how to
159 prevent stone from coming back and, there, I argued that if most of these bad stones contain phosphorous, if we could keep phosphorous out of the urine you would not have any phosphorous stones and, by using an aluminum phosphite hydroxide jell, precipitating the phosphorous in the gut, we were able to reduce phosphorous excretion in the urine and for eight years we have been keeping patients from forming stones, and the paper on that subject is at present an additional one being submitted to the Journal of the American Medical Association.

I also studied the metabolic effects of a new drug, thiaurizone, in Graves disease, carrying out careful balance studies of everything that went into the body, watching the blood and the carbohydride metabolism, and during the use of this blood, which clamps down on the thyroid and prevents it from forming a hormone and produces a medical thyroidectomy.

Then I moved to the study of energy metabolism in relation to smooth muscle because as the wall was coming along it was evident that we would have to be much concerned with metabolic factors in relation to shock, and shock consists of circulatory failure; the tissues that fail in circulatory failure are blood muscles in blood vessels and so we set about to screening the factors that are adverse and the factors that are helpful to these muscles
160 that must constantly work in the blood vessels, and it was in that study that I was able to demonstrate that succinic acid provided no useful energy for smooth muscle contraction.

Since then there have been—my main concentration, in the past few years, has been on shock and hypertension, and you have gone over many of those subjects.

Will that be satisfactory?

Q. Yes, that will be about all right. Doctor, will you tell us, do you have a degree in chemistry?

A. I do not.

Q. Now, in this entire list of publications, Dr. Shorr, that I asked you about, and in the summary that you just gave me, in describing the other list entitled "Bibliography"—

A. Yes.

Q. —will you tell us whether or not there were any papers written upon the subject of rheumatism or arthritis?

A. None at all.

Q. Did you ever write any papers on the subjects of rheumatism or arthritis?

A. None at all.

Mr. Gettleman: That is all.

Redirect Examination by Mr. Callaway.

Q. Just a minute or two more, Doctor. You stated that in the beginning of your cross-examination, I
161 believe, that your studies on succinates were carried out on animals?

A. Yes.

Q. Can the observations and results of your studies with succinates in animals be carried over to human beings?

Mr. Gettleman: Just a moment.

If the Examiner please, I will object to that question. The Doctor has done no experimentations on humans. In view of that fact, I do not think he is qualified regarding the succinic acid.

The Witness: That is right, I do not. I do not think I am qualified to answer that question.

Mr. Callaway: Well, I think, on the basis of his other experiments, in which he has, many times, carried over into human beings the result of studies on animals, I think he is certainly qualified to answer that question. In fact, as counsel for respondent knows, practically all of our knowledge in medicine has started with experiments on animals.

Mr. Gettleman: Just a moment, Mr. Callaway. I will show you an official order from the Trade Commission showing there is no relation between experiments on rats and humans, as far as that is concerned. But I do say this: Inasmuch as the Doctor testified that his tests and experimentation regarding succinic acid was done and performed on animals only, I do not think he should be permitted to give us a hypothesis, or to guess as to what
162 relationship it would bear to humans.

The best way to do that would be to actually perform the experiments, and I think the Doctor will agree with me. We are talking about science now, not about guesswork. Let us be fair about this.

Mr. Callaway: He has objected to the question and I have asked the question.

Trial Examiner Lipscomb: The Trial Examiner is of the opinion that the medical witness has a right to express an opinion on the relationship of experimentation on animals as it is applied to humans.

Mr. Gettleman: Exception.

Trial Examiner Lipscomb: Accordingly, the objection is overruled.

Mr. Gettleman: Exception.

Trial Examiner Lipscomb: Exception is noted.

By Mr. Callaway:

Q. Now, will you answer the question, Doctor, please?

A. Inasmuch as I have not conducted direct experiments on humans, I would have to infer that there is a high degree of probability, on the basis of vitamin work, on the basis of hormone work, where all the basis work was done on animals and where the same types of phenomena were observed in humans, that there is a high degree of probability that the same type of phenomena, particularly since it was carried out, if not on humans, on a 163 living, acting tissue, there is a high degree of probability that these data would hold for the humans.

Q. Now, Doctor, you stated a minute ago, that you were not in private practice. Did I understand correctly that you do see patients at the hospital?

A. Yes, sir.

Q. And treat them?

A. Yes, sir, my clinic, which I see patients constantly in the hospital, in the wards, in the clinic, I have a special ward of my own with eight patients there all the time.

I have a clinic which I am responsible for and in attendance on, which has nine thousand visits a year, and sometimes I feel that I see too many patients.

Q. Now, Doctor, you said something a minute ago, that I do not know whether it got on the record or not. Has your work in the last few years, about which he was asking you, did that involve metabolic disturbances?

A. Oh, yes.

Q. It all involved metabolic disturbances?

A. You see, the disturbances leave substances about which this work is concerned, are produced by liver and kidney under special metabolic circumstances. For example, each of these substances, renal and the hepatic sub-

stances produced under anarobic conditions, it is activated under anarobic condition.

164 Under hypertension and in shock the disturbances go on with respect to the enzyme systems controlling the formation of these substances and, more recently, the last bit of work that was cited was a direct study of enzymatic mechanisms in relation to these substances by a new method which is extremely exciting and promises to open up a great many vistas which have been obscure up 'til now.

Q. Now, he asked you something about how long you had been acquainted with the preparation Imdrin. I believe I came and talked to you about—

A. Oh, it must be more than two months ago.

Q. —about this product and that was when you first became acquainted with Imdrin as Imdrin and the formula for it? Is that correct, Doctor?

A. That is right.

Q. Now, it was at my request that you have made these calculations and things which you have testified about Imdrin?

A. Yes.

Mr. Callaway: I think that is all.

Mr. Gettleman: Just one question.

Recross Examination by Mr. Gettleman.

Q. Doctor, when did you first become acquainted with the product Imdrin?

A. As just stated, I was away during the summer, 165 so it must have been May or June of this year.

Q. That would be five or six months ago?

A. Yes, to the best of my recollection, yes.

Q. Then you want to change your answer at the present time rather than two months, you want to change that to five or six months?

A. Yes.

Q. Is that not right?

A. That is right, yes.

Q. Doctor, I think you have made it clear that the experimentation work that you performed with your sodium succinate was on animals only?

A. That is correct.

Q. Was that—

A. That is so stated.
Q. Was that rats or—
A. No, these were dogs and rabbits.
Q. Dogs and rabbits?
A. Yes.
Q. As a matter of fact, in order to definitely and scientifically state what reaction it would have on a human, from a scientific viewpoint, it should be tried on a human, should it not?
A. That is right, yes.
Mr. Gettleman: That is all.
166 Mr. Callaway: Would you care to elaborate in answer to that question, Doctor?
The Witness: Yes, it should be tried on humans with the same degree of objectivity, quantitative analysis, all the other things that unfortunately you cannot do in a human.
Mr. Gettleman: That is right.
The Witness: And in order that we be not so vulnerable to the problem that confronts us with all therapy as to what you are taking is the doctor, not the medicine. In other words, placebos will so confuse the value of the medication, the starch, just in there, and apparently do as much good as a medication.
Mr. Gettleman: Then the use of humans would be indispensable as a matter of fact in that situation?
The Witness: I would like to point out, sir, that it is not indispensable, in that indispensable would require that there be no carry-over from the animal to the human, and that is not the case. What you do is, you make your—you break your ground and build up from the animal. Wasn't all the work on insulin done on animals? That did not prevent it from working on the human, and if we carry over this assumption that nothing in the animal holds to the human, everything we have done on hypertension on the animal holds on the human.
167 I think that this only can be said, that only when certain circumstances cannot be repeated in the human, or that certain procedures are so limited in their scope—for example, many ways of studying that consists of taking tissues and destroying every bit of it and then studying the succinate. I think I make myself clear there.
By Mr. Callaway:
Q. Now, Doctor, would it have been feasible to have carried out the studies in regard to succinates on humans that you performed on animals?

Mr. Gettleman: I will object to that question, if the Examiner please. If it would be feasible. I mean, it is an indefinite—calling for an indefinite inchoate answer, whether anything would be feasible or not. I do not know. I think it is an improper question.

Mr. Callaway: Let the Doctor say—

Mr. Gettleman: He did not do it.

Mr. Callaway: There is a reason why he did not do it, and he is entitled to state the reason why he did not do it.

Trial Examiner Lipscomb: Objection overruled.

The Witness: Well, the reason why we did not do it—

Mr. Gettleman: Exception.

The Witness: The reason why we did not do it was,
168 in our studies, in the first place, in our studies on animals you can say that you are going to study in precise chemical reaction, which requires that you take tissues out of a body and you put it under favorable conditions. You keep it alive. You do the chemistry. You expose it to succinate and then you see what happens to the high energy phosphates.

Now, before you expose human beings, remove their gut and take smooth muscle out, you are going to see whether the effects are advisable, actually demonstrable by accurate chemical or physiological or chemical means, so, unless we go to human—well, unless we will sacrifice human beings for this purpose, no point is gained, providing these things can be studied on animals precisely.

That is why we went to the animal, because there would be no guesswork about what was happening. You analyze it. You get "X" number of milligrams at one time, "X" at another time. We use radioactivity, for example, in our studies in order to be able to watch the movement of a phosphate radical from one group to the other.

Now, having found out that it was, with respect to these enzymatic reactions, ineffective in overcoming the metabolic disadvantage of hypoxia, that it worsened the activity, there was no point in going to humans. If it became something that might be very critical and so promising, we would have gone to the human as we have gone
169 to the human in the hypertension, because that is promising. That is why we did it.

Mr. Gettleman: Do I understand you correctly when you say that because you really did not find out very much about an animal—

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The Witness: Oh, no.
Mr. Gettleman: I did not understand that.
The Witness: Because we could find out more.
Mr. Gettleman: You found out more?
The Witness: Oh, yes, more, and more specific measuring, isolating specific reactions, testing them chemically.
Mr. Gettleman: And then wouldn't you think that it would be feasible, then, if you would have a certainty to go to humans?
The Witness: Yes, but if all of our results said it worsened, the animal worsened, the behaviour of enzymes worsened, then how justified are we in exposing the human being to something we have demonstrated is bad?
Mr. Gettleman: It worsened the animal?
The Witness: That is right.
Mr. Gettleman: That is all.
Mr. Callaway: That is all.
Trial Examiner Lipscomb: The hearing is adjourned, to reconvene in this room tomorrow afternoon at two o'clock.

(Whereupon, at 5 P. M., September 27, 1950, the hearing in the above entitled matter was adjourned to September 28, 1950, at 2:00 P. M.)

171 Room 500, 45 Broadway,
New York City, New York,
September 28, 1950.

Met, pursuant to adjournment, at 2:00 p.m.

Before:

Abner E. Lipscomb, Trial Examiner.

Appearances:

Joseph Callaway, Attorney for Federal Trade Commission.

Frank E. Gettleman, Attorney for respondent Jerome H. Rose, (10 S. LaSalle Street, Chicago, Illinois.)

James B. Goding, Attorney for respondent J. Sanford Rose, (653 Washington Building, Washington, D. C.)

Edward Brodkey, Attorney for respondent Rhodes Pharmacal Company, Inc. (10 S. LaSalle Street, Chicago, Illinois.)

172 Proceedings.

Trial Examiner Lipscomb: The hearing will come to order.

Mr. Gettleman: If the Examiner please, at this time I want to make a motion to strike the complete testimony of Dr. Ephraim Shorr because of the following reasons:

No. 1, I believe the record will disclose that he was completely and thoroughly unqualified to discuss the problems and the issues under discussion here. He had a long list of articles that he had written, not a single one of which touched upon rheumatism, arthritis, or any of the other issues involved.

No. 2, he performed one experiment with a chemical unlike that which is involved here. He used sodium succinate; the ingredient that we have in our product is calcium succinate.

Another reason is this: that his experimentation was strictly limited to one phase of pathology in which he used animals, and that complete test, that test in its entirety,

did not touch upon the issues that are joined by the complaint:

He further stated that he had no experience with the treatment of rheumatism and arthritis.

I submit that all we obtained from Dr. Shorr was a medical mumbo-jumbo of extraneous matters. I sub-
173 mit it was a complete waste of time, not germane to the issues; and for those reasons, plus the fact that everything he testified to was immaterial to the issues, that his entire testimony be stricken from the record.

Trial Examiner Lipscomb: Do you wish to reply to that?

Mr. Callaway: If you overrule the motion, there is no need for my saying anything. If you are seriously considering it, why, I would like to be heard.

Trial Examiner Lipscomb: I am considering it, but I am going to overrule the motion.

Mr. Gettleman: Exception.

Trial Examiner Lipscomb: Your exception is noted.

(Photostatic copy of advertisement was marked Commission's Exhibit 37 for identification.)

Mr. Callaway: I have here Commission's Exhibit 37, which is another folder or leaflet similar to the one that was introduced into evidence yesterday. I have shown it to respondents' counsel. It varies in a slight degree from the folder that was introduced into evidence yesterday; and that's why I am offering this one in evidence today.

Do I understand, Mr. Gettleman, that this may go into evidence by agreement as part of respondents' advertising?

Mr. Gettleman: As a pamphlet that has been used?
174 Mr. Callaway: Yes.

Mr. Gettleman: That's right.

Trial Examiner Lipscomb: The intended advertisement is received in evidence as COMMISSION'S EXHIBIT NO. 37.

(The document referred to, heretofore marked for identification Commission's Exhibit 37, was received in evidence.)

Trial Examiner Lipscomb: Mr. Reporter, this is Dr. Irving Graef, 360 East 55th Street, New York City.

DR. IRVING GRAEF was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

Direct Examination by Mr. Callaway.

Q. Doctor, are you a physician?

A. I am.

Q. And are you a practicing physician in New York City?

A. I am.

Q. The address that you gave the reporter, was that your home address?

A. My office address.

Q. Doctor, you are being offered here as an expert witness, and the Commission is interested in the qualifications of an expert witness which will, of course, have
175 a bearing on the weight to be given the opinions which the expert gives. Will you therefore please tell us something of your education, starting in with your academic education, and on through?

A. I received a B. A. Degree from Cornell University in 1923. Doctor of Medicine in 1926. I served an internship for two years at the Michael Reese Hospital in Chicago. I was, following that, a Research Fellow and Resident in Pathology of the same hospital until October, 1929. Thereafter, I came to Bellevue Hospital, and I served as a Research Fellow in medicine with particular reference to rheumatic fever from October, 1929, until July, 1930.

Thereafter I was appointed Resident Physician in Medicine on the Third New York University Medical Division at Bellevue Hospital, and I served as Resident Physician until March, 1931, when I was appointed Assistant Pathologist at Bellevue Hospital, assigned to the Third Division, which is the New York University service.

I served in that capacity from 1931 until 1934. At the same time I held the academic appointments of Assistant in Medicine, then Instructor in Medicine, then Instructor in Pathology.

In 1934 I was appointed Assistant Professor of Pathology in charge of laboratory for New York University.

In 1936 I was promoted to Associate Professor of Pathology, and held that post until 1945.

176 In 1941 I was appointed Pathologist to Bellevue Hospital with the New York University Service.

On my returning from military service in 19— may I correct that— I took a leave of absence for military service from November, 1943 until January, 1946. Upon my returning from military service, I resumed my appointment, but retired from the Department of Pathology and have held the position of Assistant Professor of Clinical Medicine at New York University since that time, first in the College of Medicine, and since last spring in the Post-Graduate Medical School.

I engaged in the practice of internal medicine beginning in 19— fully engaged in the practice of internal medicine in 1946. Prior to that, my work in clinical medicine was in connection with my research and staff appointments, except for a brief period of nine months when I was engaged in the extramural practice of medicine in 1931.

In military service I was recruited for a special unit called the Medical Division of Chemical Warfare Service in 1943, and served as Director of Medical Research Laboratory for one of the Army units in Utah for one year, then was brought back to Edgewood Arsenal, and served as Director, Technical Director for field installations for the same Medical Division until my release from military service in January, 1946.

177 In connection with my change from work in pathology in 1946, I was appointed successively to several hospital posts. These have included attending physician to the United States Veterans Administration Hospital, Bronx, Kingsbridge Road; Adjunct Physical at Lenox Hill Hospital; Associate Attending Physician to the Goldwater Memorial Hospital on Welfare Island, which position I resigned from in April of this year in order to carry on my work as Assistant Attending Physician at Bellevue Hospital.

I was appointed Consulting Physician in Internal Medicine to the Monmouth Memorial Hospital in December, 1949.

I believe that covers most of my work.

Q. Doctor, in your connection with your profession in Goldwater Memorial Hospital, did you do any research in arthritic diseases?

A. Yes. I was involved during the period of my stay as attending physician at Goldwater Memorial Hospital

with several projects connected with the study and management of patients with rheumatic diseases. One of these was an appraisal of cardiovascular involvement in patients with rheumatoid arthritis, which study was completed.

Another was the introduction of several drugs which were to be tested for their effectiveness and usefulness in their treatment of rheumatoid arthritis. This included the
178 evaluation, particularly, of the hormones known as ACTH, cortisone, and sundry chemicals introduced by various pharmaceutical houses for testing in rheumatic subjects.

Since none of the latter proved useful, I don't suppose it is worth anything to the record to introduce them by chemical name.

In the course of my work at Goldwater Hospital, we also engaged in a clinical evaluation of a substance known as disodium succinate as a possible agent to assist in improving the metabolism and circulatory efficiency of individuals suffering from chronic vascular, and chronic heart diseases of various types.

Goldwater Memorial Hospital being an institution for chronic diseases, the patient personnel included a large number of subjects with rheumatoid arthritis, as well as other complications, and other patients, of course.

In the course of testing the drug, we had—

Mr. Brodkey: Just one moment. Let me interpose at this point. We are on the doctor's qualifications. It seems the doctor is going at some length. I would be curious to know to what particular phase of this question, as put, the doctor is now giving his response.

Mr. Callaway: He is giving his qualifications.

Mr. Brodkey: His qualifications, it seems to me, would be served for these purposes by a very brief statement
179 of that particular matter. If you see fit to elaborate by appropriate questions which is permissible hereafter, why, we will consider them.

By Mr. Callaway:

Q. All right, Doctor, just don't go any further into your work but succinates at this point.

Mr. Brodkey: Now I am going to ask that the reference to work with succinates be stricken at the moment.

Mr. Callaway: What in the world is the matter with

the man? Of course, the work with succinates is very pertinent to this hearing; it is exceedingly pertinent to it. You have got calcium succinate in the preparation.

Mr. Brodkey: I will withdraw the objection.

Mr. Callaway: I certainly think you should.

By Mr. Callaway:

Q. All right, go ahead with the remainder of your qualifications, Doctor. What scientific or medical societies are you a member of?

A. The American Medical Association and its constituent State and County bodies. The New York Academy of Medicine. The American Heart Association. The New York Rheumatism Association. The American Association for Pathologists and Bacteriologists. The Harvey Society. Sigma Psi. Diplomate of the American Board of Pathology. The American Society for Experimental Pathology. Society for Experimental Biology and Medicine.

180 I believe I have covered most of them — New York Pathological Society.

Q. Doctor, is there any special requirement for becoming a diplomate of the Society of Pathology, I believe you said—Diplomate of the American Board of Pathology; are there any special requirements for that?

A. Yes. Like other specialty boards, the American Board of Pathology requires demonstration of a high degree of competence in the field, together with sufficient experience and evidence of ability to carry on independent laboratory reseearch and direction.

Q. Let me get it clear, now: What is your present connection, so far as Medical College is concerned?

A. Assistant Professor of Clinical Medicine, Post-Graduate Medical School of the New York University, Bellevue Medical Center. The name has recently been changed, and there has been some reorganization in the faculty board.

Q. By the words "Post-Graduate," you mean you teach you teach physicians taking post-graduate courses?

A. Yes, that's correct.

Q. Doctor, have you published any scientific articles? I hand you a list here which I believe covers some of them, Doctor, but is not complete; it comes up to 1948 (handing document to witness).

Trial Examiner Lipscomb: Off the record.

181 (Discussion off the record.)

By Mr. Callaway:

Q. Doctor, does the list of publications which you hold in your hand, supplemented by the list of publications which you will in a few minutes read from a paper that I will show you, form substantially a complete list of your published scientific articles?

A. Yes.

Mr. Callaway: I would like to ask at this point that the court reporter copy this list into the record of this case, the same as if the doctor had given it in testimony from the witness stand.

Following that, I want him to given you, from the witness stand, some additional publications which he will now tell you about.

Trial Examiner Lipscomb: This method is agreeable to counsel for the respondent?

Mr. Brodkey: Perfectly agreeable.

The Witness: Vol. 3—1928. Hiller, R. I. and Graef, I. Epidemic of rheumatism at Cardiac Camp, Am. Heart J. 3:271-278, Feb. '28.

Vol. 9—1931. de La Chapelle, C. E., and Graef, I. Acute isolated myocarditis; with report of case, Arch. Int. Med. 47:942-956, June '31.

Vol 10—1931. De La Chapelle, C. E., and Graef, I. 182 Two unusual cases of subacute bacterial endocarditis (Streptococcus Viridans), M. Clin. North America 14:1335-1358, May '31.

Vol. 11—1932. Graef, I., De La Chapelle, C. E., and Vance, M. C. Micrococcus pharyngic siccus endocarditis, Am. J. Path. 8:347-354, May '32.

Vol. 13—1933. Graef, I., Parent, S., Zitron, W., and Wyckoff, J. Studies in rheumatic fever; natural course of acute manifestations of rheumatic fever uninfluenced by "specific" therapy, Am. J. M. Sc. 185:197-210, Feb. '33.

Vol. 13—1933. De La Chapelle, C. E., and Graef, I., Occurrence of subacute bacterial endorcarditis in mitral valvular disease with pre-existing auricular fibrillation; case report, Am. Heart J. 8:252-258, Dec. '32.

Vol. 14—1933. De La Chapelle, C. E., and Graef, I. Polyserositis (Pick's syndrome) associated with rheumatic valvular disease without pericarditis, M. Clin. North America 17:147-163, July '33.

Vol. 14—1933. Sturtevant, M., and Graef, I. Henoch-Schonlein purpura with paralytic ileus and rheumatic carditis, M. Clin. North America 17:91-101, July '33.

Vol. 15—1934. Graef, I., and Sturtevant, M., Cholecystitis due to Bacillus aerogenes-capsulatus; report of case with 9 cases from literature, Arch. Surg. 28:771-781.

183 Vol. 16—1934. De La Chapelle, C. E., Graef, I., and Rottino, A., Studies in rheumatic heart disease; analysis of 119 hearts with special reference to relationship of auricular fibrillation to mitral valvular deformity and certain rheumatic tissue changes, Am. Heart J. 10:62-78, Oct. '34.

Vol. 18—1935. Clark, E., and Graef, I. Chronic pulmonary arteritis in schistosomiasis mansoni associated with right ventricular hypertrophy; report of case, Am. J. Path. 11:693-706, July '35.

Vol. 20—1936. Graef, I., and Steinberg, I., Superior pulmonary sulcus tumor; case exhibiting malignant epithelial neoplasm of unknown origin with Pancoast's syndrome, Am. J. Roentgenol. 36:293-300, Sept. '36.

Vol. 20—1936. Clark, E., Graef, I., and Chasis, H. Thrombosis of aorta and coronary arteries, with special reference to "fibrinoid" lesions, Arch. Path. 22:183-212, Aug. '36.

Vol. 20—1936. Goldring, W., and Graef, I., Nephrosis with uremia following transfusion with incompatible blood; report of 7 cases with 3 deaths, Arch. Int. Med. 58:825-845, Nov. '36.

Vol. 22—1937. Graef, I., Berger, A. R., Bunim, J. J., and De La Chapelle, C. E., Auricular thrombosis in 184 rheumatic heart disease, Arch. Path. 24:344-365, September, '37.

Vol. 26—1939. Graef, I. Studies in lipid pneumonia; lipid pneumonia due to cod liver oil; lipid pneumonia due to liquid petrolatum, Arch. Path. 28:613-667, Nov. '39.

Vol. 27—1940. Graef, I., and Page, I. H. Pathological anatomy of cellophane perinephritis, Am. J. Path. 16:211-222, March '40.

Vol 27—1940. Pratt, J. H., and Graef, I. The refugee physician, Proc. Ann. Cong. M. Educ., pp. 45-47, '40.

Vol. 28—1940. Goldstein, D. H., and Graef, I. Influence of sulfanilamide and sulfapyridine on experimental pneumococcic pneumonia in rats, Arch. Path. 30:701-720, Sept. '40.

Vol. 33—1943. Graef, I., Medical hypertrophy of renal arterioles in pregnancy, Am. J. Path. 19:121-133, Jan. '43.

Vol. 33—1943. Ralli, E. P., and Graef, I. Stimulating effect of adrenalectomy on hair growth and melanin depo-

sition in black rats fed diets adequate and deficient in filtrate factors of vitamin B, with note on effect of diet on post-operative survival, Endocrinology 32:1-12, Jan. '43.

185 Vol. 35—1944. Ralli, E. P., and Graef, I. Low incidence of adrenal alterations in black rats on filtrate factor deficient diets, Am. J. Physiol. 140:713-719, Feb. '44.

Vol. 36—1944. Graef, I., Negrin, J., Jr., and Page, I. H. Development of hepatic cirrhosis in dogs after hypophysectomy, Am. J. Path. 20:823-855, Sept. '44.

Vol. 37—1945. Proskauer, G. G., Neumann, C., and Graef, I., Measurement of blood pressure in rats with special reference to effect of changes in temperature, Am. J. Physiol. 143:290-296, Feb. '45.

Vol. 38—1945. Graef, I., and Proskauer, G. G. Failure of pressor drugs to influence "juxtaglomerular apparatus" in rats, Am. J. Path. 21:779-786, July '45.

Vol. 38.—1945. Ralli, E. P., and Graef, I., Effects of synthetic and natural hormone of adrenal cortex on melanin deposition in adrenalectomized black rats fed diets adequate and deficient in filtrate factors of vitamin B_1, Endocrinology 37:252-261, Oct. '45.

Vol. 43—1948. Graef, I., Infarction of auricle, Bull, U. S. Army M. Dept. 8:481-484, June '48.

Vol. 43—1948. Graef, I., and others. Clinical and pathologic effects of nitrogen and sulfur mustards in laboratory animals, Am. J. Path. 24:1-47, Jan. '48.

Vol. 43—1948. Karnafsky, D. A., Graef, I., and
186 Smith, H. W., Studies on mechanism of action of nitrogen and sulfur mustards in vivo, Am. J. Path. 24:275-291, March '48.

These are supplementary titles to be added to that list:

Outline for pathological diagnosis of cardio-vascular diseases and anomalies; a section in the book, nomenclature, and criteria for diagnosis of diseases of the heart. New York Heart Association, 1939.

Lack of effect of sodium phenosulfazole darvisul on certain experimental virus infections; in the proceedings, Society Experimental Biology and Medicine, Volume 70, page 528, 1949, with others.

Studies on patients with cirrhosis of the liver. Plasma and liver lipid, distribution, and its relation to the pathology of the liver. American Journal of Medicine, Volume 5, page 188; 1948.

Cardiac lesions in rheumatoid arthritis. American Heart Journel. April, 1949. With Drs. Hickey and Altman.

Clinical evaluation of disodium succinate No. 2, including a report on its ineffectiveness in two cases of severe barbiturate poisoning and some toxicologic notes on certain succinate salts; and also of internal medicine, Volume 32, Page 905; 1950. With Dr. Morris Zuckerbrod.

187 Studies on tissue reactions to proteolytic enzymes. Proceedings at the International Congress for Rheumatic Diseases, June, 1949; with others. In press.

By Mr. Callaway:

Q. Now, Doctor, you had mentioned in your qualifications about your work in pathology; can you tell us in language that a layman can understand just what pathology is?

A. In the broadest meaning of the word, it has to do with disease, abnormal health of living structures, be they plant or animal. In human medicine it has to do principally with the alterations in the tissues caused by injury from whatever cause.

Q. Now, Doctor, is there any relationship between pathology and faulty metabolism?

Mr. Brodkey: I am going to object at this point. In like manner, as the Trial Examiner will recognize was done with respect to Dr. Shorr's testimony, I wish to interpose in substance the same objection to this testimony as it may go to the matter of metabolism.

It is the position of respondents that there is no allegation or complaint sufficient to form, either by words used or by reasonable import, an issue relating to metabolism here. Such being the case, we regard it as extremely irrelevant, and we believe that it should not be gone into.

188 Mr. Callaway: In answer to that, your Honor, I only want to say that they don't talk about metabolism; they talk about enzymes and enzyme systems. The question of metabolism is tied up with the action of enzymes. I am just getting up to the point about which they do talk in their literature. This is just sort of a foundation for that.

Trial Examiner Lipscomb: The objection is overruled.

Mr. Brodkey: Exception, please.

Trial Examiner Lipscomb: The exception is noted.

By Mr. Callaway:

Q. Doctor, I don't believe you have answered that question yet.

A. Please repeat the question.

Q. Is there any relationship between pathology and faulty metabolism?

A. In many pathological processes. By that I mean an abnormal process, a living cell, we can suppose that there is an alteration in the metabolism of living cells, or in the fluids which bathe the cells, which represents the environments in which the cell is living.

Therefore, in considering pathology, or ways and means in which tissues become diseased, or abnormal,—it is our goal, it is our objective in medical research and study to discern what the metabolic alteration is, because me-
189 tabolism refers to the sum total of chemical processes going on in living cells.

Q. I take it, then, the knowledge of pathology is necessary to an understanding of the treatment of diseases and disorders and faulty metabolism?

Mr. Brodkey: I am going to object to this question as leading in form.

By Mr. Callaway:

Q. Doctor, what if anything is the importance of the knowledge of pathology to an understanding of the treatment of diseases and disorders in which faulty metabolism occurs; or have you answered that?

A. The simple knowledge of pathology is absolutely essential to an understanding of disease.

Q. Are pathological changes connected in any way with the functioning of enzyme systems?

A. Yes, sir.

Q. Could you explain that for us?

A. The enzyme systems of the body, in so far as we know anything about them, depend upon a delicate balance of the internal chemical processes in the body which may be upset by any one of a number of injuries. Simple examples may make my point clearer.

The inhalation of an atmosphere poor in oxygen will upset the metabolism of the body, and in certain por-
190 tions of the body an insufficiency of the oxygen will interfere with the enzymes which depend on oxygen for their normal role. Shutting off the blood supply to a

part may do so. An infection, an injury due to a blow; at the point of injury, or where the infection sets up an abnormal pathological process, there you have a small chemical reaction. It may be larger, it may spread, in which the enzyme system is locally disturbed. As a part of the total disturbance of the total metabolism of the affected part.

Q. Then is faulty metabolism connected with the functioning of enzyme systems?

A. Indeed. There are metabolic disturbances in which the basic fault appears to be a disturbance in the enzyme system, whether the enzyme is present in sufficient concentration or absent altogether, or blocked by a part of the abnormal process.

Q. Doctor, do you have any patients whom you see in private practice or at the hospitals with which you are affiliated, who suffer from diseases involving faulty metabolism?

A. Yes, sir.

Q. Over how long a period have you been engaged in the study of pathology?

A. 21 years.

Q. Is there a class of chemical compounds known as succinates?

A. Yes.

191 Q. Does calcium succinate belong to that class?

A. Yes.

Q. Have any of your investigations been concerned with the effect of succinate on metabolism?

A. Yes, sir.

Q. Doctor, would there be any reason—

Mr. Brodkey: Well, now, did your question ask him about calcium succinate? I missed it, if it did.

Mr. Callaway: I just said "succinate".

Mr. Brodkey: I am going to object to it in that form. He hasn't answered it, has he?

Mr. Callaway: I think he did.

Mr. Brodkey: I am objecting to that question, and if it has been answered, I move that that answer be stricken out.

Trial Examiner Lipscomb: Denied.

Mr. Callaway: Just the next question will clear it up entirely, if you will wait a minute.

Trial Examiner Lipscomb: I said the objection is denied, overruled.

Mr. Brodkey: There will be an exception, please.

By Mr. Callaway:

Q. What form of succinate did you use in your research studies, Doctor?

A. In human beings we worked with disodium succinate. In laboratory work that we did as a part of
192 our research on this subject, we used other salts. Monosodium and ammonium succinate were the other salts.

Q. Doctor, in your opinion, would there be any reason to believe that the effect obtained with calcium succinate would be any different from that obtained with disodium succinate, or the other salts containing the succinate that you testified about?

Mr. Brodkey: I object to that question for the reason that it calls for a conclusion on the part of this witness, as an expression of his opinion with respect to something concerning which there has been no adequate foundation shown.

He has not, by his own admission, used calcium succinate in those connections. And that being true, I submit that he would not be in a position to know whether or not its action is the same as disodium, monosodium, or ammonium, or any that he may have testified that he used, unless, of course, he is a chemist.

Mr. Callaway: If your Honor please, he is an M.D., he is entitled to his opinion in regard to these matters involving medicine.

Mr. Brodkey: Without foundation? I think not. The law is otherwise. The mere fact that he happens to be a doctor does not qualify him in every phase of medicine.
193 And here is one wherein his opinion is solicited on a subject concerning which there is no adequate foundation.

Mr. Callaway: Let's listen to him. I want to ask him—

Mr. Brodkey: We don't want to listen to him.

Mr. Callaway: I want to ask him why, and I think if the gentleman will be quiet and listen to him, he will come to the conclusion that the doctor does know what he is talking about.

Mr. Brodkey: Will the Trial Examiner rule on this motion?

Trial Examiner Lipscomb: You may be sure that the Trial Examiner will rule. Your objection is overruled, sir.

Mr. Brodkey: There will be an exception.

Trial Examiner Lipscomb: The exception is duly noted. Will you proceed with your examination, Mr. Callaway.

By Mr. Callaway:

Q. Now, have you answered the first question—

(The reporter read the question as follows: "Question: Doctor, in your opinion, would there be any reason to believe that the effect obtained with calcium succinate would be any different from that obtained with disodium succinate, or the other salts containing the succinate that you testified about?"

194 A. I know of no reason of any evidence whatsoever. Calcium succinate would be substantially different on an equivalent dosage basis under tests like those that we set up for disodium succinate or ammonium succinate or monosodium succinate.

Mr. Brodkey: I am going to move that that be stricken for the same reason as was urged in support of the objection.

Trial Examiner Lipscomb: Denied.

Mr. Brodkey: Exception, please.

By Mr. Callaway:

Q. Doctor, when you used succinate in solution, be it the sodium succinate, disodium succinate, calcium succinate, does any acid stay with the sodium, for instance, or does it separate?

Mr. Brodkey: I am going to object to that question. There hasn't been any showing here of his having used it in any particular combination, let alone the particular combination applicable to this case.

I suggest that counsel should confine himself to facts which are shown here, or show those facts first. But we submit that there is no adequate foundation for such questioning. You are eliciting an opinion from the witness with respect to something that he certainly has not been shown he is qualified to pass on, unless we assume that

195 because he holds a Doctor of Medicine Degree, and has written the works to which he testified, that that qualifies him to testify to every phase of this matter.

Trial Examiner Lipscomb: Objection overruled.

Mr. Brodkey: There will be an exception to that please.

By Mr. Callaway:

Q. Doctor, do you remember the question?

A. Yes.

Mr. Brodkey: I would like to make another statement for the record, if I may be permitted at this point.

We have gone to some length, in behalf of respondent, when these objections are interposed, to state as specifically as was required by any rule of evidence, concerning which we profess to be familiar, our reasons in support of any such objections. It would be most gratifying if the Trial Examiner, when he makes a ruling, would at least indicate to us what he rejects in the reasoning we assign in each case. It would be most illuminating and helpful, and I think it might be helpful to others involved.

Trial Examiner Lipscomb: Proceed with your examination, sir.

By Mr. Callaway:

Q. Do you remember the question now, Doctor, or would you like to have it re-read?

196 A. I believe I remember the question. The source of succinate acid readily available and used, physiologically acceptable circumstances, may or may not dissociate, depending upon the medium in which the salt is dissolved, the temperature, the oxygen content, the amount of solvent used for dissolving the salt. Some succinic acid salts have a high degree of dissociations, some have a relatively low degree of dissociation. Some in the presence of acid will dissociate more readily than others.

The question as posed to me may be answered—

Mr. Brodkey: One moment, Doctor, are you reading?

The Witness: No.

A. (Continuing.)—may be answered in principle that the effect of succinate as such depends upon the dissociation of the succinate acid radical from the particular cation attached to it, whether it be sodium, disodium, calcium.

Mr. Brodkey: I move that that answer be stricken for the same reason noted.

Trial Examiner Lipscomb: Motion is denied.

Mr. Brodkey: There will be an exception.

By Mr. Callaway:

Q. Doctor, this research work that you have talked about, did that include a study of the effect of succinates in both patients and in animals?

A. Yes.

197 Q. Were any of the patients involved in your research work with succinate suffering from any kind of arthritis or rheumatism?

A. Yes, sir.

Q. Doctor, will succinate administered orally in man, correct or restore to normal any enzyme system that is not functioning normally?

Mr. Brodkey: I object to that question. There is certainly no foundation with respect to amount or anything else involved here, and certainly dosages is an important element. I believe the form of the question is bad, and the doctor will probably recognize that he is not qualified to form so general an opinion with respect to it.

Trial Examiner Lipscomb: Objection is overruled.

Mr. Brodkey: Will the Trial Examiner be good enough to indicate the basis for the overruling?

Trial Examiner Lipscomb: In his discretion, it seems necessary that he do so. Will you please be seated now, sir.

Mr. Brodkey: Do I understand the Trial Examiner to mean that we are not entitled, in behalf of the respondents, to interpose objections in this matter?

Trial Examiner Lipscomb: You certainly have a right to interpose all the objections that you see fit, sir.

By Mr. Callaway:

198 Q. Doctor, in your opinion will succinates administered orally in man correct and restore to normal any enzyme system that is supposedly not functioning normally?

A. There is one theoretical circumstance, and I only know it as a theoretical circumstance, in which succinate administered orally could correct towards normal, or could conceivably correct towards normal. I repeat again that this is theoretical.

Q. Could you tell us about that?

A. The situation would be one in which the succinate administered orally would be absorbed to a liver which was functioning abnormally, and under conditions of low oxygen tension. That theoretical consideration is based upon the evidence, old evidence, of Quastel that succinate may be convertible and utilizable as glucose in the absence of, or in a reduced oxygen concentration.

The doubt, or the theoretical aspect of this must be emphasized, because there is reason to think that in the liver, the succinate may compete for oxygen, thus depriving other systems in the cell of necessary oxygen for other functions.

But to narrow my answer to your specific question, it is conceivable that the administration of succinate could provide energy through glucoside, but there is evidence in

the literature, notably the work of Shorr, that when
199 administered in large enough quantities, it may inhibit other enzyme systems, or compete successfully with other energy producing systems.

It is an unsettled matter, and Shorr's evidence is admittedly experimental evidence in animal, and has not been tested in man.

Q. Doctor, in your studies, how were the succinates administered?

A. Intravenously.

Q. Have you ever given succinates by mouth?

A. No, sir.

Q. Why not?

A. In the design of our investigations and experiments, we wanted succinate to be distributed widely through the tissues, particularly in those parts of the body with reduced blood supply. If succinate is given orally, there is every reason to suppose that, like other orally administered substances, all of it would be absorbed, if all of it were absorbed, it would be concentrated and used in the liver and converted to sugar.

Mr. Brodkey: I am going to object—it is too late for an objection, since the answer has been given—I move to strike that answer since it refers completely to his own experience
200 with intravenous use of the substances in question, something which is certainly not germane to the matter here at hand.

We have a product which is administered orally, not intravenously; hence any qualification which might seem to arise from having administered this matter intravenously would have no application to the product at hand.

Trial Examiner Lipscomb: Do you wish to respond to that?

Mr. Callaway: He said why he didn't give it by mouth, and why it couldn't be given by mouth. There wasn't any of it that got past the liver.

Now, what we are seeking to do, your Honor, is to take this position: That succinate, the calcium succinate in this preparation which they have advertised for sale, and say is a good remedy for the conditions set forth in the complaint—we say that calcium succinate, given in that manner, never gets past the liver, never gets into the blood stream—

Mr. Brodkey: Is counsel testifying here? I don't think he has any right, by way of explanation or otherwise, to make such an explanation.

Trial Examiner Lipscomb: The Trial Examiner is prepared to rule without further discussion on this particular point.

It is the opinion of the Trial Examiner that on these,
201 to him difficult, scientific problems of medicine and the effect internally upon the system, that he must approach the problem with humility before the problems of relevance. Some of the things may not be precisely relevant; they may. I cannot tell always at the hearing.

If it appears on the surface to be relevant, I think I have a right to refer to the transcript and consider quietly into the whole. If it is incorrectly received, the only damage to the respondent is a few lines or a few pages of transcript. That, I regret.

But I think the larger good requires liberality on the questions of relevancy, and I hope respondents' counsel will be tolerant and bear that in mind in his future objections.

The objection is overruled. Proceed, Mr. Callaway.

By Mr. Callaway:

Q. Doctor, do I understand from what you said that succinates taken by mouth will not get into the blood; it circulates generally throughout the blood?

A. That is the reasonable conclusion concerning the effect of succinate given by mouth.

Q. Doctor, I hand you a copy of the complaint in this case, and I want to call your attention to the formula and the directions for use—I believe it begins on the second page there (handing to witness). You have seen that before; you are familiar with that, are you not?

A. Yes.

202 Q. In fact, Dr. Dobbs and I have talked to you about this matter a number of times, have we not?

A. Yes, sir.

Q. Doctor, in your testimony you have, among other things, talked of enzymes, and the respondents make this statement in their advertising: "For aid in insuring adequate functioning of the vital enzyme systems (biochemical catalysis) of the blood and bones, manganese salicylate, and calcium succinate have been scientifically combined with the other ingredients for maximum effect."

Now, Doctor, in your opinion, will Imdrin, taken as directed, correct and restore to normal the vital enzyme systems in the blood and bones?

Mr. Brodkey: I must object to that question before the

doctor answers it, and the Trial Examiner has the benefit of his answer, whatever it may be, and I know not.

I submit for the record that there is absolutely no showing that this doctor is qualified to state what Imdrin can or cannot do, will or will not do, in the manner taken as described or otherwise.

Trial Examiner Lipscomb: Objection is overruled.

Mr. Brodkey: There will be an exception, please.

The Witness: Will you state the question, please?

By Mr. Callaway:

Q. Will Imdrin, taken as directed, in your opinion, 203 restore the vital enzyme systems of the blood and bones?

A. It will not, in my opinion.

Q. In your opinion, will Imdrin, taken as directed, correct and restore to normal the vital enzyme system of the body?

A. It will not, in my opinion.

Trial Examiner Lipscomb: Mr. Callaway, if it is a convenient stopping place, let us have a five-minute recess.

(A short recess was taken.)

Trial Examiner Lipscomb: On the record.

By Mr. Callaway:

Q. Doctor, in your opinion, will Imdrin, taken as directed insure normal and adequate functioning of the vital enzyme systems of the body, including those of the blood and bones?

A. It will not.

Mr. Brodkey: I am objecting to the question for the same reason.

Trial Examiner Lipscomb: Objection is overruled.

Mr. Brodkey: Exception.

By Mr. Callaway:

Q. What was your answer?

A. It will not.

Q. Doctor, in your opinion, will Imdrin, taken as directed by patients with any kind of arthritis, rheumatism, sciatica, gout, neuralgia, fribrositis, or bursitis, furnish any benefit over and above that obtained from the 204 salicylates in this preparation?

Mr. Brodkey: I object to that for the same reason. It doesn't appear that the doctor has had experience

sufficient to qualify him with respect to that particular field.

Trial Examiner Lipscomb: Objection overruled.

Mr. Brodkey: Exception.

By Mr. Callaway:

Q. Will you answer, please?

A. Will you restate the question?

(The reporter read the question as follows:

"Question: Doctor, in your opinion, will Imdrin, taken as directed by patients with any kind of arthritis, rheumatism, sciatica, gout, neuralgia, fibrositis or bursitis, furnish any benefit over and above that obtained from the salicylates in this preparation?")

A. I do not think so.

Q. Doctor, in your opinion will Imdrin, taken as directed, have a beneficial effect on the underlying causes of any kind of arthritis or rheumatism, sciatica, fibrositis, neuralgia, bursitis or gout?

Mr. Brodkey: The same objection.

Trial Examiner Lipscomb: The same ruling; objection overruled.

Mr. Brodkey: Exception.

A. I do not think so.

205 Q. Doctor, in your opinion, will Imdrin, taken as directed, arrest the progress of or prevent the recurrence of any kind of arthritis or rheumatism, sciatica, fibrositis, neuralgia, bursitis, or gout?

A. I do not think so.

Q. Doctor, in your opinion, will Imdrin, taken as directed, have any beneficial effect on the underlying cause of any kind of neuritis except that caused exclusively by thiamine deficiency?

Mr. Brodkey: Objection to that for the same reason.

Q. I call your attention to the fact that Imdrin does contain a small amount of thiamine.

Mr. Brodkey: I submit, if the Court please, that there is absolutely no showing at all that the doctor has had that experience with thiamine alone, let alone the other particular elements. For that reason, I object to that question.

Trial Examiner Lipscomb: I think your objection goes more to the weight than to the credibility of the witness to speak. Accordingly, it is overruled.

Mr. Brodkey: It is our position, if the Court please, that this is not a matter which goes to the weight, but goes rather to the competence.

Trial Examiner Lipscomb: The Trial Examiner understands your position, sir.

206 A. I do not think that Imdrin could provide any cure except for possible thiamine deficiency, except possibly in thiamine deficiency.

Q. Do you think it would have a beneficial effect on the underlying cause of any kind of neuritis except that caused exclusively by thiamine deficiency?

A. No.

Q. Now, Doctor, about the amount of thiamine in Imdrin, is that a sufficient quantity of thiamine to really—is that a comparable amount of thiamine to the amount that would be given to a patient suffering from thiamine deficiency?

A. No.

Q. Is it too small an amount?

A. Much too small.

Q. Do I understand that your answer is based on the fact that possibly over a long enough period of time there might be some benefit from the thiamine?

A. Well, if I were treating a patient with thiamine deficiency, neuritis due to thiamine deficiency, I could not let the condition drag on in time, and to utilize a small dosis recommended here would simply protract the neuritis, it would not cure it.

Mr. Brodkey: There is no claim here, your Honor, that this is a cure for any vitamin deficiency, and for that reason I move the answer be stricken.

207 Trial Examiner Lipscomb: Would you read that question and answer to me, Mr. Reporter.

(The reporter read the question and answer as follows:

"Question: Do I understand that your answer is based on the fact that possibly over a long enough period of time there might be some benefit from the thiamine?

"Answer: Well, if I were treating a patient with thiamine deficiency, neuritis due to thiamine deficiency, I could not let the condition drag on in time, and to utilize a small dosage recommended here would simply protract the neuritis, it would not cure it.")

Mr. Callaway: Your Honor, the basis of that question is that among the other conditions for which this is ad-

vertised, this preparation is advertised, is neuritis. Now, there is one kind of neuritis that is caused by a thiamine deficiency. This preparation does have a small amount of thiamine in it. So I asked him specifically in regard to neuritis, would it have any beneficial effect on the underlying causes of any kind of neuritis except that particular kind caused by thiamine deficiency. He said it would not.

Then I asked him was it sufficient dosage to be really beneficial, we might say, in neuritis caused by thiamine deficiency, and that was what his last answer was
208 to.

Mr. Brodkey: The label specifically states that it is not for thiamine deficiency. That seems to resolve the issue of representation pretty clearly in the case. No such representation made, not there or anywhere.

Trial Examiner Lipscomb: Objection is overruled.

Mr. Brodkey: Exception, please.

By Mr. Callaway:

Q. Doctor, in your opinion, will Imdrin, taken as directed, cure any kind of arthritis or rheumatism, sciatica, gout, neuralgia, fibrositis, bursitis or neuritis?

A. No.

Mr. Brodkey: I am going to object to that for the reason there is no claim to a cure. It is clearly irrelevant.

Trial Examiner Lipscomb: Objection overruled.

Mr. Brodkey: Exception, please.

Mr. Callaway: I believe I will rest, and let counsel take him on cross-examination.

Trial Examiner Lipscomb: Off the record.

(Discussion off the record.)

(A short recess was taken.)

Trial Examiner Lipscomb: On the record.

Cross-Examination by Mr. Brodkey.

209 Q. Dr. Graef, may I ask, have you ever prescribed Imdrin to any of your patients?

A. No, sir.

Q. Then, in other words, if I understand you correctly, you have no personal practical knowledge or experience with Imdrin?

A. That's correct.

Q. And all that you have stated otherwise was on the basis of other than any practical experience?

A. With Imdrin?
Q. With Imdrin.
A. That is correct.
Q. Are you familiar with the label on the bottle of Imdrin?
A. I am not familiar with the label.
Q. Are you familiar with the qualitative and quantitative formula of Imdrin—now, don't look.
A. I have the formula on my lap.
Q. I know that. Will you please set it over on the Examiner's table?
A. Yes, sir.
Q. Can you tell us, independently, what that formula is comprised of?
A. I made no effort to memorize it.
Q. Then you cannot?
A. Not without reading it.
210 Q. As you testify now, then, you don't know what the formula is?
A. I know its constituents, but I might make an error in a decimal point, or in exact quantity of constituents. But I know it substantially, what is contains.
Q. You don't know the exact formula, is that right?
A. I wouldn't attempt to try to recall it exactly. I would be willing to make a guess at it and be corrected if I were off by a minute fraction.
Q. Have you ever seen the bottle of Imdrin with its label?
A. No, sir.
Q. Do you have a decree in chemistry, Doctor?
A. No, sir.
Q. Do you have a degree in pharmacology?
A. No, sir.
Q. Are you a diplomate in medicine?
A. No, sir. If you mean by that internal medicine, the American Board of Internal Medicine, you are correct, I do not have a degree in that.
Q. Did you ever write any scientific treatise or paper on the alleviation of pain from rheumatism or arthritis?
A. Yes.
Q. On the alleviation of pain?
A. Not entitled "The Alleviation of Pain," but dealing with the alleviation of pain.
211 Q. Was that based on a study of humans or animals?

A. Yes, on humans.

Q. What is the title and reference to that particular work?

The Witness: May I have the bibliography to refresh my memory?

(Mr. Callaway hands document to witness.)

A. "Studies in Rheumatic Fever, Natural Course of Acute Manifestations of Rheumatic Fever, Uninfluenced by Specific Therapy." The word "Specific" in quotes.

Mr. Brodkey: I ask that be stricken; it is not responsive to the question, the question being confined expressly to the alleviation of pains of rheumatism and arthritis.

The Witness: Rheumatic fever, in my opinion, is one of the diseases under the category of rheumatism. There are forms of rheumatic fever that are indistinguishable from the forms of arthritis.

By Mr. Brodkey:

Q. That will be a sufficient answer to that question.

Mr. Callaway: No, it isn't. Let him finish his answer. Go ahead, Doctor.

The Witness: There are forms of rheumatic fever that are indistinguishable from arthritis.

By Mr. Brodkey:

Q. Doctor, have you ever written any scientific or
212 such paper on the alleviation of pain of rheumatism or arthritis other than rheumatic fever?

A. No.

Q. Have you ever made a study of that particular phase, apart from rheumatic fever?

A. I make a constant study in the control and treatment of patients with arthritis.

Q. Have you written any papers on that subject?

A. No.

Q. Then I expect that it is a fair statement to say that the only scientific paper which you did write was the one you have named on rheumatic fever, is that right?

Mr. Callaway: Oh, no.

Q. On rheumatism and arthritis?

A. In reference to what aspect of it?

Q. The alleviation of pain caused by rheumatism or arthritis, this is the only one?

A. That is correct.

Q. When was that written, Doctor?

A. That was published in 1933.
Q. And you haven't written any since?
A. That's correct, having said one only.
Q. What relation does the year 1933 bear to your admittance to practice?
A. I was licensed to practice in 1926.
213 Q. So this would have been six years thereafter?
A. Seven years.

Mr. Brodkey: At this time respondents move to strike the entire testimony of Dr. Graef, since it appears that there has been no experience of the doctor with respect to alleviation of pain from rheumatism and arthritis which is, of course, the claim in this case. I believe that is a sufficient motion. I think it is clear; the respondents' position is that we make no claims—

Mr. Callaway: Wait just a minute. The doctor said there is a correction that he wanted to make in his testimony. I believe it might influence the motion. That is the reason why I suggest it at this time.

Mr. Brodkey: The motion we will allow to remain, and that will conclude our cross-examination.

Trial Examiner Lipscomb: Do you wish to make a response?

Mr. Callaway: No, I don't think it requires any answer, your Honor.

Trial Examiner Lipscomb: The motion of the respondent to strike the testimony of the witness is overruled.

Mr. Brodkey: If the motion is denied, respondents except.

Redirect Examination by Mr. Callaway.

214 Q. Doctor, as a part of your pre-medical course, did you take courses in chemistry?
A. Yes, sir.
Q. And as a part of your medical training, did you study physiological chemistry?
A. Yes.
Q. Your experiments with succinate in—

Mr. Brodkey: Just a moment, I am going to object to any questions with reference to succinate at this point, since I feel that there is little question, the Trial Examiner will note, that they go beyond the permissible scope of redirect examination, in that I didn't in any manner, shape or form, touch upon it on cross-examination.

Mr. Callaway: I think he is correct in that.

Trial Examiner Lipscomb: I think so too.

Mr. Brodkey: Then I take it that the record will show the objection sustained.

Trial Examiner Lipscomb: The objection is sustained.

Mr. Callaway: That's all.

Mr. Brodkey: That is all, Doctor, thank you.

Trial Examiner Lipscomb: The witness is excused. Thank you, Doctor.

(Witness excused.)

Trial Examiner Lipscomb: Off the record.

215 (Discussion off the record.)

Trial Examiner Lipscomb: On the record. With the concurrence of counsel, this hearing is now adjourned to reconvene at Chicago, Illinois, on the morning of November 20, 1950, at 10:00 o'clock. Notification of the exact room in which the hearing will be held will be furnished to the respondents at a later time.

(Whereupon, at 3:40 p. m., the hearing was adjourned to November 20, 1950, at 10 a. m., at Chicago, Illinois.)

216 Room 802-A, U. S. Post Office,
433 West Van Buren Street,
Chicago, Illinois,
November 20, 1950.

Met, pursuant to adjournment, at 10:00 a. m.

Before:

Abner E. Lipscomb, Trial Examiner.

Appearances:

Joseph Callaway, Attorney for the Federal Trade Commission.

Frank E. Gettleman, Attorney for Respondent, Jerome H. Rose, (10 South LaSalle Street, Chicago, Illinois).

James B. Goding, Attorney for Respondent, J. Sanford Rose, (653 Washington Building, Washington, D. C.).

Edward Brodkey, Attorney for Respondent, Rhodes Pharmacal Company, Inc., (10 South LaSalle Street, Chicago, Illinois).

217 Proceedings.

Trial Examiner Lipscomb: The hearing will come to order.

Counsel supporting the complaint may call his first witness.

Mr. Callaway: I want to call Dr. Rosenberg.

EDWARD F. ROSENBERG was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

Direct Examination by Mr. Callaway.

Q. You are Dr. Edward F. Rosenberg?

A. Yes, sir.

Q. Where do you live, Doctor?

A. In Chicago. My address is 5411 Hyde Park Boulevard.

Q. Are you a practicing physician?
A. Yes, sir, I am.
Q. Doctor, you are being offered here today as an expert witness, and the weight to be given the testimony of an expert witness is, to some extent, at least, dependent upon his qualifications as an expert.
Will you, therefore, tell us something of your qualifications? Let's begin with your degrees which you have received, both academic and scientific, including dates
218 and the institutions.
A. I was graduated from the University of Delaware in 1929 with a degree of Bachelor of Arts, and then, after a year of further study, I got a degree of Master of Arts in the field of organic chemistry at that university.
Subsequently, I attended Jefferson Medical College and was graduated in 1934 with a degree of M. D.
After that, I spent a year as an intern at St. Luke's Hospital in Bethlehem, Pennsylvania, and was then appointed a Fellow in medicine at the Mayo Clinic and Mayo Foundation in Rochester, Minnesota.
This continued for three years, from 1935 to 1938, and subsequently, I was employed by the Mayo Clinic.
Q. Let me interrupt right there. What particular line of work did you follow at the Mayo Clinic?
A. In the Fellowship years, the work was devoted to internal medicine.
It involved periods of special training in a number of sub specialties, including metabolic diseases, rheumatic diseases and so forth.
Q. I see.
A. Following the Fellowship, I was employed by the Mayo Clinic as an assistant, first, in the department of Pathology and then, subsequently in the department of Medicine under Dr. Philip S. Hench, who was then the
219 chief of the section on rheumatic diseases.
During those years at the Mayo Clinic, graduate work was continued and I think in 1939 I took the degree of Master of Science in internal medicine from the University of Minnesota, and in 1941, Ph.D. in internal medicine from the University of Minnesota.
Q. Now, Doctor, what hospital appointments have been conferred upon you since graduation from medical school?
A. Well, after leaving the Mayo Clinic in 1942, I came to Chicago as a member of the Department of Medicine at

the Michael Reese Hospital as chief of the Arthritis Clinic there, and more recently, I have been appointed a member of the Department of Medicine at the Mount Sinai Hospital here in Chicago and chief of its arthritis clinic.

Q. Do you do any teaching since graduation?

A. Yes, I have the rank of Assistant Clinical Professor of Medicine at Chicago Medical College.

Q. Now, Doctor, you have mentioned something of clinics at both Mount Sinai and Michael Reese Hospitals, I believe. Do you direct those clinics?

A. Yes, sir, I do.

Q. And do you instruct the medical students at the school with which you are affiliated?

A. Yes, medical students and other physicians.

Q. In what line of work—arthritis?

220 A. In the field of arthritis and rheumatic diseases.

Q. Do you participate in any seminars or give any talks on rheumatism?

A. Yes, frequently I do.

Mr. Callaway: Here is a list of those talks. I want to have that copied in the record or submit it as an exhibit.

Mr. Gettleman: No, if the Examiner please, I object to that going in as an exhibit. I do not know what the talks were; I do not know the contents of the talks. I would suggest he be asked about those talks.

Mr. Callaway: All right.

By Mr. Callaway:

Q. Doctor, I hand you a list of three typewritten pages. Do those pages give a list of recent talks to various groups that you have given in regard to subjects that are shown there?

I believe the list shows the particular subject and the group to which it was given, does it not?

Mr. Gettleman: Just a minute. I will object to that, if the Examiner please. That is not the proper way to get that in evidence.

Mr. Brodkey: I shall further object on the ground that the doctor has not shown that he has exhausted any recollection with respect to having made any talks, regardless of their subject matter.

221 Mr. Callaway: All right. I will put it another way.

Trial Examiner Lipscomb: The question has been withdrawn.

By Mr. Callaway:

Q. Doctor, have you recently, within the last couple of years, in connection with the question I asked you about participation in seminars and talks on arthritis and rheumatism, have you given any talks on arthritis, rheumatism, or related subjects to any groups, and if so, will you name the date, the subject and the group to which the talk was given?

Mr. Gettleman: I will object to that if the witness attempts to read from that paper, if the Examiner please. It does not call for any reading of that paper.

Mr. Callaway: If Your Honor please, the witness has a right to refresh his recollection with dates and things.

Mr. Brodkey: He has not professed to have failed in his recollection as yet.

Trial Examiner Lipscomb: Doctor, do you need to refer to the pages before you to refresh your recollection?

The Witness: Perhaps I can simplify this matter by merely stating that during recent years I have frequently addressed meetings of medical societies in the city of Chicago.

I have addressed a number of meetings of national
222 medical societies and have frequently talked to smaller groups of hospitals, groups of physicians at hospitals on topics which bear on arthritis and rheumatic diseases.

By Mr. Callaway:

Q. How many such talks would you say, Doctor, you have given in the last couple of years?

A. I would estimate 15 or 20.

Q. Now, Doctor, are you a member of any medical or scientific societies?

A. Yes, sir, I am. Shall I name them?

Q. Yes, sir, please.

A. I am a Fellow of the American Medical Association; a Fellow of the American College of Physicians; a member of the Central Society for Clinical Research; the American Society for Clinical Investigation; the American Rheumatism Association; Chicago Rheumatism Society; the Chicago Society for Internal Medicine; the Institute of Medicine of Chicago.

I am a member of Sigma Phi and of Alpha Omega Alpha, honorary scientific societies.

Q. Now, have you held any offices in those various organizations you have mentioned?

A. Yes, sir, in some of them.

I was recently vice president of the American Rheumatism Association and I am at present president of the
223 Chicago Rheumatism Society.

Q. Now, Doctor, did you spend some time in the army during the last world war?

A. Yes, sir, I did.

Q. What was your line of work there?

A. After the initial indoctrination period at Carlisle Barracks, I was sent to the army's arthritis center in Hot Springs, Arkansas, where I continued my work for three years.

Q. And then you were released?

A. And subsequently I was released, yes, sir.

Q. Now, you mentioned that you have a private practice here in Chicago.

In what field do you specialize, if any, here in your private practice?

A. I am a specialist in the field of internal medicine and I pay particular attention to the subjects of arthritis and rheumatic diseases.

Q. And I believe you said you were also assistant professor of medicine at Chicago Medical College?

A. Yes, sir, I did.

Q. Now, do you hold any position in connection with the United States Army now?

A. Yes, sir, I am a consultant to the Surgeon General with relation to arthritis and rheumatic diseases.

Mr. Callaway: I have here a list of the doctor's
224 publications, if you would like to see them.

Mr. Gettleman: We have no objection to their going into the record.

Mr. Brodkey: in the same manner as was done with respect to the writings of the witness heretofore as though the witness had testified to them.

In other words, it may be stipulated that the reporter can copy this list as though in response to the question, stating that the witness wrote the articles in question.

By Mr. Callaway:

Q. Dr. Rosenberg, will you please read this bibliography.

A. Yes.

1. Rosenberg, E. F. Kneeland, R. F., and Skinner, G. S.,

5 B Ethyl substituted derivatives of barbituric acid. J. Am. Chem. Soc., 56:139-1340.

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Q. Now, Doctor, this list which the reporter has copied in the record at this point is, as I understand it, a list of your various scientific publications, giving the names of the authors of the publications, the date published and the magazine or whatever it was published in, is that correct?

A. Yes, sir, I think that is correct.

Q. And the abbreviations used in this bibliography are those commonly used in those publications, is that correct?

A. Yes, sir, that is correct.

Q. Does this list, Doctor, include your contributions to the latest edition of Comroe's Arthritis?

A. Yes, sir, I believe those are listed.

Q. Is Comroe's Arthritis recognized as a standard work on arthritis?

231 A. Well, I think it is, sir. I believe it is a well known text book.

Q. And you were called on, I believe, by the editor to write four or five chapters in that book?

A. Yes, sir, that is correct.

Q. And they are listed in this list?

A. Yes, sir.

Trial Examiner Lipscomb: The reporter was directed to copy the bibliography as if the witness had testified to the various publications.

Mr. Callaway: That is right.

By Mr. Callaway:

Q. Doctor, are you a member of the American College of Physicians?

A. Yes, sir, I am a Fellow of the American College of Physicians.

Q. What is the purpose of the American College of Physicians and the significance of the Fellowship in this organization?

A. The American College of Physicians is an association of specialists in the field of internal medicine and the purpose of the organization is to provide a yearly meeting ground for the exchange of views and the presentation of new research, newly found material, to other members for critical listening.

Other activities of the college are to sponsor research, to underwrite the Fellowships and in other ways to 232 further the education of physicians in this country.

Q. Now, are you also a diplomate of the American Board of Internal Medicine?

A. Yes, sir, I am.

Q. What is the purpose of the American Board of Internal Medicine and the significance of the certification as a diplomate?

A. In the field of medicine in America, we have established boards of examiners who investigate qualifications of a physician and establish him by a certificate as a specialist in various fields.

In the field of internal medicine, we have a board designated the Internal Board of Medicine and I have been certificated by that group as a specialist.

Q. Now, does the treatment of rheumatic and arthritic diseases come under the head of internal medicine?

A. No, to a large extent, I would say the treatment of rheumatic diseases is conducted by specialists or physicians who are interested in internal medicine, although physicians in many other fields also tend these patients.

Q. Have you any connection with the Rheumatism Review?

A. Yes, sir. I have been one of the associate editors of the Rheumatism Review for a number of years.

Q. What is the Rheumatism Review?

A. The American Rheumatism Associatio[illegible]ich
233 is a national association of physicians who are particularly interested in arthritis and rheumatic diseases, some years ago established an editorial board which had as its mission the examination of the world literature, the digest of that literature and the preparation of a review of it for publication in a national medical journal, and in recent years, I have contributed to that work as an associate editor.

Q. Now, Doctor, do I understand from what you said that a large portion of your medical life has been spent in the study and treatment of rheumatic and arthritic conditions?

A. Yes, sir, that is correct.

Q. Could you give us any idea of the number of folks or population in this country that are afflicted with these conditions?

A. The number is very large, although we do not have an exact figure.

We commonly refer, in answering such a question, to the results of a survey conducted by the United States Public Health Service during the middle '30's, which indicated incidents of rheumatic diseases in the neighborhood of seven million in this country at that time.

Mr. Gettleman: If the Examiner please, I think that answer should be stricken. It is not responsive, and it has a lot of extraneous matter.

That called for a very simple answer; I think it
234 should be answered simply. Ultimately, he said, "seven million".

I do not think it is necessary to go into every source of things as to what he read. I think the answer should be direct.

Mr. Callaway: Your Honor, if he had just said, "seven million" flat, they would have objected to it because he did not give the source of his information. I think he is entitled to give his source of information; he, himself, has not made any survey.

Mr. Brodkey: I shall object to that on the grounds that the information itself is the best evidence in its original form and source.

Hence, if it is hearsay, that fact has been made to appear. He has familiarized himself from a source. He is not being given a question which calls for an opinion.

Trial Examiner Lipscomb: Read the question and the answer to me, please.

(The reporter read the record as follows:

"Q. Could you give us any idea of the number of folks or population in this country that are afflicted with these conditions?

"A. The number is very large, although we do not have an exact figure.

235 "We commonly refer, in answering such a question, to the results of a survey conducted by the United States Public Health Service during the middle '30's, which indicated incidence of rheumatic diseases in the neighborhood of seven million in this country at that time.")

Trial Examiner Lipscomb: Read the next statement, please.

(The reporter read the record as follows:

"Mr. Gettleman: If the Examiner please, I think that answer should be stricken. It is not responsive, and it has a lot of extraneous matter.

"That called for a very simple answer; I think it should be answered simply. Ultimately, he said, 'seven million'.

"I do not think it is necessary to go into every source of things as to what he read. I think the answer should be direct.")

Trial Examiner Lipscomb: Off the record.

(Discussion off the record.)

Trial Examiner Lipscomb: On the record.

The answer is stricken and will be limited to the statement of approximately "seven million".

By Mr. Callaway:

Q. Doctor, in your private practice and in hospitals with which you are associated and at the various clinics
236 which you attend, have you seen and treated many patients suffering with osteo-arthritis?

A. Yes, sir, I have.

Q. Rheumatoid arthritis?

A. Yes, sir, many.

Q. Infectious arthritis?

A. Yes, sir.

Q. I should have said, perhaps, specific arthritis?

A. Yes, sir.

Q. Gout?

A. Yes, sir.

Q. And other rheumatic diseases, including fibrositis, bursitis, neuritis and neuralgia?

A. Yes, sir.

Q. Doctor, have you also, in your private practice and in your hospital connections and in the clinics which you have attended, followed the course of these various diseases and disorders, including their complications?

A. Yes, sir, I have.

Q. Have you had occasion to conduct studies in research, clinically, that is, in patients in rheumatic and arthritic conditions?

A. Yes, I have conducted quite a few.

Q. Tell us something of the breadth and scope of the work you have done in that field?

237 A. Among the researches that I have conducted or with which I have been associated, there have been studies of the pathology of various rheumatic diseases, studies of peculiar clinical manifestations of a number of rheumatic diseases, studies of the response of certain rheumatic diseases to special treatments.

Q. Have you done any work in Cortisone and ACTH?

A. Yes, sir, since the spring of 1949—

Mr. Gettleman: Just a minute, if the Examiner please. My same objection. He just asked a very simple question that requires a direct, simple answer.

Mr. Callaway: I asked him to explain some of his work, and I think that is—

Mr. Gettleman: That was the question before that.

Mr. Callaway: Well, if he insists I will now ask him to explain and go into his work in some of the cortisone and ACTH.

Mr. Brodkey: I object to that in that I do not see the relevancy. What is the bearing of his examination insofar as he may testify to studies concerning cortisone, its use, with the product at hand?

Mr. Callaway: Part of his qualifications as an expert in the field of arthritis.

Mr. Brodkey: Would that qualify him?

Mr. Callaway: Yes.

238 Mr. Brodkey: With this product?

Mr. Callaway: It helps qualify him in the field of rheumatism and arthritis, which he is in.

Trial Examiner Lipscomb: Objection overruled. You may answer.

The Witness: May I have the question again?

(The reporter read the question as follows:

"Q. Have you done any work in cortisone and ACTH?")

The Witness: Since the spring of 1949, I have been associated with a number of research projects having to do with cortisone and ACTH, studies of their clinical application and studies of their physiological effects.

Q. And some of these recent scientific papers that you have had published had a bearing on those studies, did they not?

A. Yes, sir, that is correct.

Q. Doctor, is there a disease known simply as arthritis?

A. No, sir, there is not.

Q. Is there a disease simply known as rheumatism?

A. No, sir.

Q. What are some of the different kinds of arthritis and rheumatism, Doctor; will you tell us something about that?

A. Well, as used by physicians, those terms are general ones and refer to many diseases.

Included under diseases to which physicians refer
239 generally as rheumatic diseases, are some of which the cause is known and some of which the cause is not known.

For example, among diseases, important chronic forms of rheumatism or arthritis of unknown cause, are specific entities such as rheumatoid arthritis, osteo-arthritis, rheumatic fever.

Then, there are some of which the causes are known, such as the arthritis of gonorrhea, the arthritis of syphilis, the arthritis associated with pneumonia or tuberculous infections.

There are forms of arthritis or rheumatism which are connected with disturbances of chemical metabolism—for example, gout.

Sometimes arthritis or rheumatism is an expression of neoplasm or tumor growth.

Mr. Brodkey: May I interrupt, Doctor, just long enough to impose this question of the Trial Examiner.

I would like to know whether the answer the Doctor has given to the pending question is directed toward proving that the Doctor is an expert, because if it is, well and good, assuming that the answer will be used only for that purpose.

However, should the Doctor be testifying to the substance

of the matter which he is now bringing out, I am afraid we are going to have to object to it.

240 It seems to me that it has no bearing upon his qualifications as such, and he is going into a causal relationship to which it is anticipated we will have to object.

Mr. Callaway: If your Honor please, the complaint sets forth that the respondents have advertised this preparation as a reliable, effective and adequate treatment for all kinds of arthritis, rheumatism, neuritis, sciatica, gout, neuralgia, fibrositis and bursitis.

Now, I do not know how we are going to approach the question as to whether it is an effective or a reliable treatment unless we first find out what these diseases are, and that is the purpose of the question.

Trial Examiner Lipscomb: Objection overruled. Doctor, you may proceed.

Mr. Brodkey: We take exception.

Trial Examiner Lipscomb: Exception noted.

By Mr. Callaway:

Q. Doctor, had you finished your answer?

A. As I recall, I think I had finished. I meant to point out, in answering your question, that there is no disease to which one could simply refer to as arthritis; that this term, as it is understood by physicians has reference to many diseases of differing courses, differing causes, and, as we see it today, requiring differing approaches from the standpoint of treatment.

Q. Doctor, does the term "rheumatism" also in-

241 clude such ailments as fibrositis?

A. Yes, sir.

Q. Bursitis?

A. Yes, sir.

Q. Neuralgia?

A. Yes, sir, I would say so.

Q. Neuritis?

A. Yes.

Q. And sciatica?

A. Yes, sir.

Q. Now, Doctor, are the various kinds of arthritis and rheumatism that you have mentioned characterized by the same pathological changes?

A. No, sir, they are not.

Q. Would you tell us at this juncture what you mean by "pathological changes"?

Mr. Brodkey: I am going to object to that question and move that the previous question and answer be stricken.

We made this point before, and for the sake of the record, I believe it must be made again. Perhaps it was not made clearly enough.

We object to this line of questioning because it unquestionably goes to matters irrelevant. The relevancy has been pointed out because there seems to be an allegation in the complaint here which has been traversed, that the
242 meaning of the representations, if any, made in the advertising of respondents here—

Trial Examiner Lipscomb: May I interrupt you, sir?

Mr. Brodkey: Yes.

Trial Examiner Lipscomb: Would you care to have this off the record?

Mr. Brodkey: No, I would like to have it on the record.

Trial Examiner Lipscomb: You can make extended remarks.

Mr. Brodkey: That is right. I am sorry to encumber the record, but I think the true nature of this objection should be made known. I repeat, perhaps it was not made clearly enough before.

The objection goes to the fact that we have no issue in the case on cure. There is no representation, it is the respondents' position, there is no representation in the advertising relating to cure.

Now, if relevancy may be established simply by making unlimited charges in the complaint, charges which amount to no more than conclusions of law on the part of the pleadings, then there is no limitation to relevancy in any case.

In other words, it would have sufficed in this instance had the government, in our opinion, said here, "Certain representations have been made in high fervor and
243 in this form by the respondents in this case", but they were not satisfied to rest with that. They insisted upon characterizing in further statements the meaning of any such representations made by these respondents.

That, we submit, they have no right to do.

They represent their own conclusions and if they may continue that process, then, certainly, everything will be germane to the issue, depending only upon the breadth of the pleading, whether necessary, proper or leading or not.

That, we submit, cannot obtain. Therefore, we feel it is highly irregular.

We believe it goes to a charge which is not only denied, but unnecessary. That is the nature of our objection. I believe there is no showing of relevancy.

Mr. Callaway: I think he made that same objection abundantly clear in the hearing at New York, and there has already been a ruling on it, and I hope the gentleman will be satisfied at this time in regard to the fact that he has made it abundantly clear.

Mr. Brodkey: Well, we rather hoped, Mr. Callaway, to point out to the Trial Examiner on this occasion that if it were carried to its conclusion it would be disastrous.

We submit it is necessary for the Trial Examiner to make a determination as to whether or not there is relevancy, depending on what has been represented by
244 the respondents here, and unless it could be said that the Trial Examiner has already made that determination, I believe it is questionable, and we intend to prove later that that is not the meaning of those statements, and prove it definitely.

Mr. Callaway: I think the issues in this case are made by the complaint and answer.

It is alleged in the complaint that the respondents have represented these matters; they have represented that this preparation is an adequate, effective and reliable treatment for these diseases; they have represented that the preparation has arrested the cause and cured these diseases; and that it is an adequate and effective and reliable treatment for symptoms and manifestations of these diseases and respondents have denied those allegations.

Now, it certainly makes testimony in regard to those allegations pertinent and competent.

Mr. Brodkey: May it please the Trial Examiner, in answer to Mr. Callaway's position, it seems that perhaps we should move to strike from the complaint that paragraph—the number escapes me at the moment—wherein the government seeks to characterize in its own language what it is alleged the respondents have represented by their advertising, and our answer to it, as well.

It seems to me that that should be removed from the pleadings entirely. It constitutes no issue in this
245 matter at all.

We claim, and it is our position that the advertising speaks for itself and that it says, in effect, that we offer something for the relief of pain attendant upon the diseases in question.

Mr. Callaway: Now, the matter can be shortened some, Your Honor, if the respondent, at this stage, will state definitely for the record that they are willing to admit the truth of sub paragraphs (1) and (2) of paragraph four of the complaint.

Mr. Brodkey: Of course, we will not admit those. That is your characterization.

Mr. Callaway: No, that is not our characterization. Those are the statements in which we say that Imdrin, no matter how taken, is not a treatment for gout, neuralgia, arthritis, rheumatism, neuritis, sciatica, fibrositis or bursitis.

Mr. Brodkey: That matter not being in issue, I see no reason in the world for admitting it. That is not our position, however.

The position of these respondents has been made abundantly clear at this point, I hope, that the advertising speaks for itself.

Mr. Callaway: Those allegations I read to you have nothing to do with the advertising.

246 Mr. Brodkey: What do they have to do with, then?

Mr. Callaway: They have to do with statements in the complaint that your preparation is not an adequate, effective or reliable treatment for those conditions; that it will not arrest the progress of or correct the underlying causes of those diseases.

Now, are you willing to admit that your preparation will not do those things? If you are, it will shorten this proceeding.

Mr. Brodkey: No, we see no obligation on the part of the respondents to so admit. Neither does it appear that there is any implication that because these respondents are unwilling to make the admission in question, that the product in question may not have that result and effect.

Trial Examiner Lipscomb: The objection we have of the respondent is overruled.

Mr. Brodkey: There will be an exception, please.

Trial Examiner Lipscomb: Exception noted.

By Mr. Callaway:

Q. Now, back where we were, Doctor, I believe I asked you if the various kinds of arthritis and rheumatism that you have mentioned are characterized by these same pathological changes—are they, or not?

A. No, sir, they are not.

Q. And then, I believe, I had also asked you what
247 was meant by the words "pathological change"?

A. I believe I started to answer that question by saying that the term "pathological change" refers to the character of morphologic changes, the changes in a person's structure which occur in organs as a result of disease.

Mr. Brodkey: I assume that our objection will stand to this entire line of testimony.

Trial Examiner Lipscomb: It will, sir.

Mr. Brodkey: Yes.

By Mr. Callaway:

Q. Now, Doctor, are the various kinds of arthritis and rheumatism characterized by the same progress and the same developments?

A. No, sir, they are not.

Q. Are they characterized by the same manifestations?

A. No, sir. In many instances the manifestations are different.

Q. Do the various kinds of arthritis and rheumatism respond to the same form of treatment?

A. No, sir, they do not.

Q. What does the word "treatment" mean to you in relation to a disease or condition such as any type of arthritis?

A. Well, to a physician, that word "treatment" is an inclusive one.

The physician who plans treatment takes into con-
248 sideration many methods of approach. He may consider as treatment his recommendations as regards rest; his recommendations as regards occupation and climate.

He may include in his treatment recommendations in regard to the use of proper medicines; physical therapy, and so forth.

Mr. Brodkey: I object to this question and move it be stricken on the ground that the answer is not responsive to the question which simply asks what the meaning of the word "treatment" is, and the witness, himself, qualified it to give a doctor's meaning.

I submit that is not fair. We are interested in meanings generally, if at all.

Mr. Callaway: If Your Honor please, might I make this suggestion, that if he wants to interpose an objection

before the witness starts his answer, I am sure the witness will give him time to interpose such objection before answering, but if after the witness starts answering, I do think it is, at least, impolite to interrupt. He might wait until the witness gets through and raise an objection and a motion to strike, if he wants to.

Mr. Brodkey: Not until the witness interposed in his answer that he was answering as a doctor, and a doctor solely, could it be known an objection was in order.

Trial Examiner Lipscomb: Off the record.

249 (Discussion off the record.)

Trial Examiner Lipscomb: On the record.

The answer will be stricken and you may rephrase your question, if you wish.

By Mr. Callaway:

Q. Doctor, I asked you what the word "treatment" meant to you in relation to such a disease.

Could you confine your answer to that?

A. Well, my answer would be along the same lines, excepting, if I may, I would omit the phrase "to a physician".

Q. All right, then, will you continue your answer?

A. To me, the word "treatment" implies consideration of many things—of the patient's rest; of his diet; of his proper occupation; of the proper amount of exercise and activity; of medications of physical therapy procedures in some instances.

Q. What would physical therapy include?

A. The use of physical forms of treatment, such as heat, massages, manipulations. I would also consider the use of surgical measures, braces, supports and so forth.

Q. Would nutrition and correction of associated illnesses be included in your consideration?

A. Yes.

Mr. Gettleman: I object to that, if the Examiner please. That is leading. Let him ask him if there is anything else, and not tell him.

250 Trial Examiner Lipscomb: Sustained. You may rephrase the question.

By Mr. Callaway:

Q. Doctor, is there a single drug or a combination of drugs which constitute an adequate, effective or reliable

treatment for all the various kinds of arthritis, rheumatism and related conditions?

Mr. Brodkey: I object to that on the ground that there has been no adequate foundation laid for the solicitation of any such opinion in any manner, shape or form.

Mr. Callaway: How could a man be better qualified to state an opinion than a man with the qualifications he has given?

Mr. Brodkey: The Doctor would have, by that question, to state that he knew of the use of every possible combination of drugs for that disease or group of diseases, of his own personal knowledge, and obviously, it would be an impossibility.

Trial Examiner Lipscomb: If you are qualified to answer the question, will you please answer it? The objection is overruled.

Mr. Brodkey: Exception.

Trial Examiner Lipscomb: Exception noted.

The Witness: Will you read the question?

251 (The reporter read the question as follows:

"Q. Doctor, is there a single drug or a combination of drugs which constitute an adequate, effective or reliable treatment for all the various kinds of arthritis, rheumatism and related conditions?")

The Witness: No, sir, there is no such drug nor is there any combination of drugs.

Mr. Brodkey: Would you add, "so far as you know", Doctor?

The Witness: No, sir, and if you please, I will not have you tell me what I wish to say. I prefer to state my own answers.

Mr. Brodkey: Very vell. That is a positive answer.

Trial Examiner Lipscomb: We will take a five minute recess.

(A short recess was taken.)

Trial Examiner Lipscomb: On the record.

The Trial Examiner wishes to make a few remarks to counsel for the respondents.

In a jury trial, there may be a necessity to interrupt witnesses, but in this type of proceeding where we can completely strike the testimony, I think there is really no occasion to interrupt the witness in the middle of a sentence. Therefore, I request that you restrain yourself

252 and do not interrupt the witness until he has finished his statement.

I will also request—and this is somewhat embarrassing to the Trial Examiner—that you observe the honored custom in all our proceedings, that when you have an objection, to please give the Trial Examiner the courtesy to arise.

You may now proceed.

By Mr. Callaway:

Q. Doctor, when a patient complains of arthritis and rheumatism, in talking with the patient when he comes to you, do you note the sex of the patient?

A. Yes, sir, I do.

Q. And the occupation of the patient?

A. Yes, sir.

Q. Would the information as to the age, sex or occupation of the patient have a bearing on your diagnosis?

A. Yes, sir, it might.

Q. Would the patient's personal history, family history of illnesses, have a bearing on your diagnosis?

A. Yes, sir, sometimes they do.

Q. Would any other diseases that the patient might have had have a bearing on your diagnosis?

A. Yes, sir.

Q. Would any injuries that the patient might have had in the past, might it or couldn't it have a bearing on

253 your diagnosis?

A. Yes, sir.

Q. Would any systemic diseases that the patient might have had in the past have a bearing on your diagnosis?

A. Yes, sir.

Mr. Brodkey: If the Trial Examiner please, at this point I wish to object to this whole line of questioning in that it is clearly painted; that counsel for the government is leading the witness completely, putting into his mouth questions concerning diagnosis which call for an answer of yes or no.

In other words, counsel for the government is doing the testifying throughout this line of questioning.

Trial Examiner Lipscomb: The Trial Examiner will admonish the attorney for the complainant to avoid using leading questions.

Mr. Callaway: All of these matters—just one more question in that line.

By Mr. Callaway:

Q. All these matters that I have previously inquired about, I understand they would have a bearing on your diagnosis, is that correct?

A. Yes, sir.

Q. Now, what else would you inquire about in line of the patient's history?

254 A. In order to arrive at a diagnosis?

Q. Yes.

A. In a study of the history, in matters other than those which you have mentioned which have a bearing, I think it will include questions of previous surgery, for example, that might have a bearing; also, a detailed consideration of the course of the illness of which the patient is complaining; the character of its onset; the speed and character of its progress; the response to previous measures of treatment, and so forth.

All of those things have a bearing on arriving at a correct diagnosis.

Q. Now, would those matters which you have mentioned have a value, or would they not, in helping you determine whether the patient had arthritis or rheumatism?

A. Yes, sir, I would say that would be elementary. One would have to have that information to make that decision.

Q. And would those matters which you have previously mentioned be of value in enabling you to determine what type of arthritis or rheumatism he had?

A. Yes, sir, that would be the purpose of questioning such as we have outlined.

Q. Now, Doctor, after taking the patient's history, what would you do next?

A. Well, after the history comes an examination, a

255 physical examination.

Q. And what would that include?

A. Well, that includes a careful study, a careful examination of the entire individual.

It requires that that person be undressed in my presence, and thereupon, I make a detailed examination of every part of his anatomy that I can reach, his eyes, ears, nose and throat; the appearance of his skin and posture; examination of his heart, lungs, his abdomen; an examination of his rectum and genital organs and, in addition to that, a survey of the condition of the joints—I examine all of them.

Q. Now, in the examination of the points, how would you proceed, Doctor?

A. In the general way. I have a routine method of procedure which involves starting at the top and going down, examining each joint which I can reach with my hands or which I can see with my eyes for its mobility, for presence of swelling or tenderness, for discoloration; I examine for changes in adjacent structures, muscles as regards atrophy and so forth.

Q. Now, Doctor, after taking the history of the individual and performing the physical examination that you have described, what else would you do in reaching a diagnosis?

A. Well, in addition to those procedures, an arrival at a definite or final decision as regards diagnosis, is often
256 helped by laboratory tests.

Q. What would they include?

A. They would include examinations of the blood, the urine, various secretions. Sometimes they would include an examination of the contents of joints, an examination of the fluid, examinations of X-rays of various affected joints.

Q. Doctor, what is the sedimentation rate?

A. That is one of the tests of the condition of the blood commonly used in this field.

Q. Now, Doctor, what may be the consequences of delay in instituting adequate and effective treatment for a person afflicted with some forms of arthritis?

Mr. Brodkey: I object to that. It seems he is asking for an opinion of the doctor as to a cause or relationship for which there is no foundation in any form. I do not think it is germane to the issues, and it is irrelevant to our discussion.

Trial Examiner Lipscomb: Please read the question.

(The reporter read the question as follows:

"Q. Now, Doctor, what may be the consequences of delay in instituting adequate and effective treatment for a person afflicted with some forms of arthritis?")

Trial Examiner Lipscomb: The objection is overruled.

Mr. Brodkey: Exception, please.

257 By Mr. Callaway:

Q. Go ahead, Doctor.

A. Sir, the consequences of delay in institution of proper treatment for a patient suffering with these diseases may, in some instances, be extremely serious.

I would say that in many cases the outcome of the case

is dependent upon early diagnosis, proper diagnosis and institution of the proper treatment.

The question of whether an individual with a given form of arthritis will end up as a hopeless cripple or whether he will be a useful citizen may depend entirely on whether his disease has been recognized properly, whether its nature has been recognized, and whether he has had the opportunity for good treatment.

In some instances, sir, I would say that the delay might even prove fatal. There is no question in my mind but that the results of delay—just in general, the results of delay—may often be extremely serious. It might be disastrous.

I admit that there are some instances where delay might not be such a terrible thing, but in a general way, it is a bad business.

Q. Doctor, could you give us some estimate of some period of time, for instance, in which the delay in some types of arthritis might be very serious?

A. It would depend on the nature of the disease, of 258 course. I can think of circumstances in which delay of a few days or a week or two, could mean the difference between recovery, return, essentially, to normal, or, on the other hand, a result which would involve terrible crippling.

For example, an individual who has an infection of his joints with a germ such as the Staphylococcus, that disease needs to be recognized promptly. If it is not, within a matter of days or within a week or two, permanent serious damage may result to the affected joint.

Mr. Brodkey: May we have a continuing objection to this entire line of interrogation concerning the consequences of delay, Your Honor?

Trial Examiner Lipscomb: You may have a continuing objection.

By Mr. Callaway:

Q. Now, Doctor, you stated a moment ago that in taking the patient's history you inquired as to what previous treatment, if any, he had.

Do you find, or do you not find that many patients with different types of arthritis and rheumatism have resorted to self medication and purchased some proprietary medicine for use?

A. Yes, sir, I often find that. It is a common practice.

Q. Does there ever occur between you and your patients

a discussion as to why they took this particular pro-
159 prietary medicine?

Mr. Brodkey: I object to that, if the Court please, as to whether or not there has been such a discussion relating to their taking it, taking the medicine, self medication, so called, the use of proprietary medicines.

There is no great objection, but I anticipate—and I think this is the proper point at which to impose the objection—that this will be followed by a whole line of questions relating to the substance of such conversations held with the doctor by such patients, plus his opinion as to what they think as a result of it, and our objection is made at this time to any attempt at that entire line of questioning.

Mr. Callaway: You are anticipating correctly, and in pursuing this line of questioning, I am within the decisions of the Circuit Court of Appeals and so I desire to pursue them.

Trial Examiner Lipscomb: Objection overruled. Answer the question.

Mr. Brodkey: Exception.

Trial Examiner Lipscomb: Exception noted.

By Mr. Callaway:

Q. Doctor, does there ever occur between you and your patients a discussion as to why they took this particular proprietary medicine?

A. Yes, sir, I often question patients on that point.

260 Q. Do your patients ever ask you about the efficacy of the different proprietary medicines, telling you they have seen them advertised for arthritis and rheumatic conditions?

A. Yes, sir, they commonly ask me that question.

Q. Do your patients frequently discuss with you the advertising claims for these different preparations?

Mr. Brodkey: I think we should specifically object to that question, as well as our general continuing objection.

Trial Examiner Lipscomb: Objection overruled.

Mr. Brodkey: Exception, please.

The Witness: Yes, sir, we often discuss such advertising claims.

My patients frequently bring the advertisements to my office and read them to me and point out certain phrases in them and ask my opinion of them, discussing the subject of such remedies in general.

By Mr. Callaway:

Q. Doctor, do you think from your contacts with your patients and the inquiries and discussions which you have had with them about the advertisements of various proprietary medicines for rheumatism and arthritis, that you are able to say with at least some degree of assurance what these advertisements mean to patients suffering from these conditions?

Mr. Brodkey: Objection.

Mr. Goding: I would like to make a remark.

261 Unless it appears quite clearly that the advertising referred to is that which is actually at issue in this hearing, I fail to see how it is competent.

Mr. Brodkey: I further suggest that there has been no foundation of any kind or nature or description tending to show that the Doctor, however expert in the field of medicine, is an expert in the interpretation of the meaning of "advertising", be it this advertising or any other.

Mr. Goding: Will you read that pending question back?

(The reporter read the question as follows:

"Q. Doctor, do you think from your contacts with your patients and the inquiries and discussions which you have had with them about the advertisements of various proprietary medicines for rheumatism and arthritis, that you are able to say with at least some degree of assurance what these advertisements mean to patients suffering from these conditions?")

Mr. Goding: My objection goes to the generality of this question and I think unless Mr. Callaway is prepared to prove through this witness that these patients to whom he refers actually discuss the specific, one or more of the specific ads involved here, that this question or the ultimate answer that Mr. Callaway seeks would be incompetent.

262 Trial Examiner Lipscomb: Off the record.

(Discussion off the record.)

Trial Examiner Lipscomb: On the record.

Mr. Callaway: Now, the last question which I have asked and the questions immediately preceding it are based upon the ruling of the Court in the cases of Stanley Laboratories *vs.* Federal Trade Commission and Charles of the Ritz *vs.* Federal Trade Commission.

I do not have the citations for them, but they are well known cases.

Trial Examiner Lipscomb: Off the record.
(Discussion off the record.)
Trial Examiner Lipscomb: On the record.
Mr. Goding: We object to this inquiry because it has not yet been brought out from this witness that he has discussed with any of these patients to whom he refers any of the ads in issue, any of the advertising or representations in issue.

We feel that this witness cannot qualify as an expert of consumer reaction to advertising unless it appears specifically from his testimony or otherwise that, as a foundational background, he has so discussed this advertising with his patients.

Trial Examiner Lipscomb: Off the record.
(Discussion off the record.)

263 Trial Examiner Lipscomb: On the record.
The objection of counsel for the respondent is overruled.

Doctor, you may answer the question.
Mr. Callaway: Do you remember the question, Doctor?
The Witness: Yes, sir, I think so—I am sorry, I do not.
Will you please read the question?
(The reporter again read the question as follows:
"Q. Doctor, do you think from your contacts with your patients and the inquiries and discussions which you have had with them about the advertisements of various proprietary medicines for rheumatism and arthritis, that you are able to say with at least some degree of assurance what these advertisements mean to patients suffering from these conditions?")
The Witness: Yes, sir, I think so.

By Mr. Callaway:

Q. Now, Doctor, I believe I have talked to you about respondents' advertisements in evidence, have I not, and I believe you have gone over those advertisements with me in some detail, is that correct?

A. Yes, sir, we have.

264 Q. Doctor, I show you Commission's Exhibits 1 through 31, starting right here, and also Commission's Exhibit 37—

Mr. Goding: Will you repeat the question, please?
Mr. Callaway: I have not finished the question yet.
Mr. Goding: I am sorry.

By Mr. Callaway:

Q. (Continuing.) —and I ask you what, in your opinion, patients suffering from rheumatism, arthritis, and allied conditions would be likely to understand from those advertisements as to the effectiveness of this preparation as a treatment for their condition?

Mr. Brodkey: May it please the Trial Examiner, we object at this point for the record for the reasons which were heretofore noted before we went off the record to this entire line of testimony, this question and others or similar import which may follow.

Mr. Goding: May I say this, also. It may well be, in all fairness to the respondents, that the rule of testing qualifications of an expert generally should be invoked here now. That is to say, I think probably not only would it go to the question of weight—assuming we are wrong and that the rulings of the Trial Examiner are correct—I think if that is the situation, then, at least we should be treated in the same manner as though it were an examination the Doctor was about to testify to regarding a physical condition.

265 We should have the right to test the adequacy of his expertees, so to speak, in order to see whether he is qualified.

Specifically, I think the inquiry would go to the extent and the type of his discussions with patients before your Honor would rule on the admissibility.

Mr. Callaway: Your Honor, wouldn't that come on cross examination?

Mr. Goding: Well, then, it would go to the weight. What I have in mind, I think if it develops from the examination that I think we are entitled to at this point, that the doctor's background is not adequate to qualify him as an expert in consumer reaction, then his testimony, apart from everything else we have said, would be inadmissible.

Mr. Brodkey: I have at least one question in mind, perhaps two or so, which I know I should like to ask the doctor before he is permitted to answer any of the matter in question because it seems patent at this point, from Mr. Callaway's question itself, that the doctor's knowledge of these advertisements comes from his having discussed them with Mr. Callaway.

Mr. Callaway: It is just going right down the line of those court decisions that I am talking about.

Mr. Brodkey: But the doctor has already stated—

Trial Examiner Lipscomb: Gentlemen, pardon me,
266 please. I will rule with the respondents. I think probably at this time they are entitled to ask questions concerning the peculiar qualifications of the doctor in particular.

Therefore, I will grant the respondents that opportunity.

Mr. Callaway: And I would like to take exception.

Trial Examiner Lipscomb: You will have an exception to the ruling of the Trial Examiner.

You may proceed with your examination as to his qualifications as to this matter. Make it as brief as you reasonably can, consistent with your responsibilities.

Mr. Goding: Yes. I think, however, this is a rather important matter to us and we would like to adequately canvass the doctor's qualifications.

Cross-Examination by Mr. Goding.

Q. Doctor, would you say when was the first occasion when you discussed with any patient the matter of advertising or labelling of any drug product?

A. I cannot give an exact date, but the time was many years ago.

Q. Was the discussion commenced on your initiative?

A. As to the original discussion, I cannot say, but I often initiate these discussions.

Q. For any particular purpose?

267 A. Yes.

Q. What is that purpose?

A. To instruct myself as to the character of a patient's previous treatments, whether they be from a physician or in the way of proprietary measures.

Q. Maybe we are not talking about the same thing, Doctor. I am talking—my questions are directed to the interpretation of advertising by purchasers, not what the history of prior therapy had been with regard to specific patients.

Now, since we understand each other, let me ask you now this question. When, if at all, did you ever discuss with any of your patients the matter of the meaning of any representations in advertising or labelling of any drug product?

A. Again, I say that I cannot tell you when that first discussion took place, but it was some years ago.

Q. When was the last time?
A. Within the last few days.
Q. When, specifically?
A. Well, I was in my office during this past week and I had several such discussions with patients.
Q. What were the products involved?
A. One was Imdrin; another was Dolcin; there were others.
Q. There were others on that day?
A. I did not say on that day.
Q. What?
268 A. I did not say on that day. There were others recently.
Q. Now, were these discussions subsequent to any talk you may have had with Mr. Callaway or any other representative of the Federal Trade Commission in connection with your projected testimony?
You can answer that yes or no.
A. Yes, they were subsequent to it because our discussions took place some months ago.
Q. Now, when, next prior to the discussions that you had with the representative of the Federal Trade Commission, next prior, sir, did you have any discussion with any patient concerning the interpretation or meaning of advertising of any drug product?
A. The advertising of Imdrin, specifically, I believe, came to my attention specifically about two years ago.
Q. Now, I wish you would follow my question.
Please read the question.
(The reporter read the question as follows:
"Q. Now, when, next prior to the discussions that you had with the representatives of the Federal Trade Commission, next prior, sir, did you have any discussion with any patient concerning the interpretation or meaning of advertising of any drug product?")

269 By Mr. Goding:

Q. Is that question clear, sir?
A. Yes, I think I understand it, but I do not see how I can answer that.
Q. Well, can you give us an approximation? Maybe I can help you. I think you said it was about a month ago that you talked to someone from the Federal Trade Commission with regard—
A. Some months ago.

Q. Some months ago?

A. Yes.

Q. Do you remember how many months ago?

A. When, prior to that, I would have discussed Imdrin with a patient, is that correct?

Q. That is correct.

I was trying, in my questions, to fix a more specific time when you talked to these people in order to help you.

A. I do not see how I can possibly answer that question except to say I have frequently discussed the advertising of Imdrin within the past two years with numerous patients who have brought these to my office and asked me my opinion; asked me to explain what the possibilities would be as to their being bettered by these, and so forth.

Mr. Goding: I move that answer be stricken.

Mr. Callaway: No—

270 Mr. Goding: I move that that answer be stricken.

I merely suggest that your Honor will hear—

Trial Examiner Lipscomb: I think the answer, although perhaps not directly responsive, is, nevertheless, invoked by your question and is relative to the inquiry and, therefore, your request for it to be stricken is not granted.

It would be time consuming—

Mr. Goding: Yes, I do not want to waste any time, but I do think that the good doctor should be admonished and instructed to follow my questions.

I simply asked when, next prior to that discussion with the Federal Trade people, did he discuss the matter we are concerned about with any patient, and we have a long dissertation.

Mr. Callaway: Now, Your Honor, may I say something at this time?

Mr. Goding: I am acceding. We, of course, accept the Examiner's ruling.

Mr. Callaway: Now, I think in the interest of saving time, Your Honor, the doctor's last answer on the record shows a knowledge of what the patients think about the advertisement of Imdrin, and I did not even know that he was asked it, and I think it is time to cut off the cross-examination on this particular subject.

Mr. Brodkey: I have one question I want to ask.

271 I will reserve it until Mr. Goding is through.

Trial Examiner Lipscomb: You may proceed.

Mr. Goding: Thank you.

By Mr. Goding:

Q. Have you discussed the advertising of any other drug product with any of your patients, Doctor, besides Imdrin?

A. Yes, sir.

Q. Which drug products?

Mr. Callaway: Now, wait just a minute. Wouldn't that, possibly, get into the realm of personal privilege?

Mr. Gettleman: That is an issue.

Mr. Brodkey: You opened it up wide.

Mr. Goding: I do not think so. We are testing the expertees of the witness.

Trial Examiner Lipscomb: You may answer, Doctor.

Mr. Callaway: Do you know the question, Doctor?

The Witness: May I have it again?

(The reporter read the record as follows:

((Q. Have you discussed the advertising of any other drug product with any of your patients, Doctor, besides Imdrin?

"A. Yes, sir.

"Q. Which drug products?")

The Witness: Well, sir, if I understand that question correctly, I would list for you a great number of drugs
272 and remedies. You have not indicated here that you even wanted me to confine myself to proprietaries or nostrums.

By Mr. Goding:

Q. All right, Doctor, let's confine ourselves to proprietaries and, having in mind we are talking about discussions of the advertising of drugs, not the use of the drugs, but the advertising of the drugs.

In other words, the question is this: which drugs, in addition to Imdrin—

Mr. Callaway: He has already said Dolcin.

Mr. Goding: Wait a minute, Mr. Callaway. I think that is highly unfair.

Trial Examiner Lipscomb: Off the record.

(Discussion off the record.)

Trial Examiner Lipscomb: On the record.

Mr. Goding: Strike that question.

By Mr. Goding:

Q. In other words, Doctor, the advertising of which drugs, in addition to Imdrin, did you discuss with any of your patients at any time?

A. Am I to answer that question?

Trial Examiner Lipscomb: Yes, sir.

The Witness: I have mentioned Dolcin. I have repeatedly discussed with patients the advertising of Anacin.

Many times in the past year I have discussed with
273 patients a remedy advertised for the treatment of rheumatism, called Dr. Green's Rheumatism Remedy.

By Mr. Goding:

Q. Does that complete your answer, sir?

A. I am thinking.

Q. I am sorry, sir; go ahead.

A. Recently my patients have been bringing me advertisements which had to deal with a drug called Pregneolone. I will think of more in a moment—Artisone.

Well, sir, at the moment that is all I can think of.

Q. All right. No, would you reemmber the publication in which the advertising of each of these appeared?

Mr. Callaway: If Your Honor please, I object to that. That is going too far. I think they have thoroughly shown he is qualified and I move that we go back to direct examination of this witness.

Trial Examiner Lipscomb: Objection overruled. The doctor can answer the question, if he can.

The Witness: Well, sir, with regard to the first two—Dolcin and Imdrin—of course, the advertisements have come, for the most part, I believe, from the local daily newspapers.

I have, also, seen pamphlets, circulars, which were used in the advertisements of these substances and which, apparently, either had been sent to patients or which had
274 been given to them in drug stores.

By Mr. Goding:

Q. How about Dr. Green's product?

A. Yes, with regard to that, it seems to me the advertisements for that have been from newspapers and magazines.

Q. Do you remember the newspaper or newspapers?

A. No, sir.

Q. Do you remember the magazines or magazines?

A. No, sir, I do not. I do not remember.

Q. Did you save the ads that were brought to you with regard to Dr. Green's?

A. No, sir, probably not, not with regard to any of these.

Q. Now, how about Pregneolone?

A. The advertisements of Pregneolone have appeared in a great many magazines and journals which are distributed to doctors and sent to doctors' offices, and it has been in these, recently, that I have seen advertisements of Pregneolone and Artisone.

Q. Well, Doctor, you understand the nature of my inquiry. It goes to the advertising that is brought you and discussed with you by the patients.

A. Yes.

Q. Not something that was sent to you directly.

A. No, these are advertisements which came into the hands of patients.

275 Q. I see. Now, how about Artisone?

A. The same comment applies there.

Q. Now, Doctor, I would like to ask you this. Let me ask you this in order that we will perfectly understand each other.

Do you have any of the advertising to which you have referred in your office? Have you kept any of it, any advertising of any of these products?

A. I think I would have some of it, yes.

Q. Would you, when you get back, check to see if you have?

A. If I am instructed to do so, I will.

Mr. Callaway: Your Honor, that has been going on far enough. Hasn't he been properly qualified?

Trial Examiner Lipscomb: I want to bear with you. Make the rest of your examination very brief.

Mr. Goding: Thank you, sir.

By Mr. Goding:

Q. Now, Doctor, will you tell us what you say and what the patient says in the discussions that you have with regard to advertising that you have been referring to?

A. Will you repeat that? Will you tell me that again?

Q. Well, my question is directed to this, the conversations that you have with the patient concerning the advertising that we have been talking about.

Mr. Callaway: Now, I will have to object to that.

276 He said he had conversations with patients for many years.

Mr. Goding: This goes to the heart of my objection.

Mr. Callaway: Which conversation are you asking him about?

Mr. Goding: Since the doctor has a failure of memory regarding specific dates of discussion, then I will be very happy to go down the line.

Trial Examiner Lipscomb: Off the record.

(Discussion off the record.)

Trial Examiner Lipscomb: On the record.

Doctor, the purpose of the question is, as stated by counsel, that you explain the substance of the conversation that you generally engage in when you discuss an advertisement with a patient.

Mr. Brodkey: And I would suggest, if the Examiner please, that the doctor be instructed to put it, as far as he can, in this form, "and I said and the patient said", or something to that effect.

Trial Examiner Lipscomb: No, the Examiner will not so restrict the doctor because that would be requiring a recollection of memory, I think, beyond the compass of any ordinary mind, even an excellent mind.

You may answer the question the best you can.

The Witness: Well, I certainly would not be able to testify as to what I said in any conversation next prior
277 to my conversation which initiated my coming here, the conversations with Mr. Callaway. That would be impossible.

I see a great many patients every week, new patients and old patients, and these conversations concerning the advisability of following some suggested treatment or taking some drug takes place frequenty.

I cannot remember, but I recall having these conversations frequently.

By Mr. Goding:

Q. What were they, doctor—what was the subject of these conversations?

A. The patients commonly come to consult me and bring in their hand or their purse advertisements—we will say an advertisement of Imdrin—and say, "Here is a drug advertised as a treatment for my arthritis. Do you think I should use it? It is something that is apt to do me some good?", and the conversation ordinarily proceeds from there.

Q. Does it vary at all from what you said the patient said?

A. Yes, that is one type of conversation, I would say. Another type is for a patient to come and say, "Well, Doctor, among the things I have done for myself for my arthritis is to take one or another of some remedies", which may be mentioned. "What do you think of those remedies? Do you think I should do that and do you think I should take some more?" and so forth.

278 Q. I am going to ask you this, Doctor: Have you ever had any extended discussion with any patient concerning the meaning of any of the advertising of any of the drugs that you have referred to?

A. Well, I think it would be only fair to say that we have not picked advertisements apart, taken sentences and words and studied their meaning in my office during my consultations with patients, but we commonly discuss these advertisements, the probable merits or the possible merits, the possible value to patients of taking this type of remedy.

Q. As I understand it, Doctor, the discussions essentially went to the therapeutic value of the drug, is that right?

A. Well, the possible therapeutic value is the most common subject discussed during such conversations.

Mr. Goding: I think that is all.

Mr. Brodkey: Now, I have—

Mr. Callaway: Oh, my Lord!

Trial Examiner Lipscomb: I think, gentlemen, that the remaining question can be propounded on direct examination.

Mr. Brodkey: Do I understand that the Trial Examiner will not indulge counsel for this respondent to the extent of two brief questions?

Trial Examiner Lipscomb: If they are two brief questions, you may go ahead.

Mr. Brodkey: I shall promise to make them so if 279 the Doctor will answer them directly.

By Mr. Brodkey:

Q. The first question is this, Doctor. If I understand you correctly, you stated you had quite recently discussed the subject with a patient as it related to the product Imdrin.

Am I right?

A. That is right.

Q. At whose initiative?
A. At the initiative of the patient.
Q. Did the patient come to see you?
Mr. Callaway: That is two. You have had your two questions.
Mr. Brodkey: Literally. I am not going to protract this.
Trial Examiner Lipscomb: Go ahead.

By Mr. Brodkey:

Q. Did the patient come to see you without any suggestion or solicitation from you—
Mr. Callaway: Now, what has that got to do with the issues?

By Mr. Brodkey:

Q. (Continuing.) —to consult you on this advertisement?
Mr. Callaway: Now, wait a minute. I want to understand that.
Mr. Brodkey: He can answer yes or no.
280 Mr. Callaway: Wait a minute. I want to understand that question.
Trial Examiner Lipscomb: Off the record.
(Discussion off the record.)
Trial Examiner Lipscomb: On the record.
You may answer the question, Doctor.
The Witness: Well, sir, I do not remember whether the subject came up as a result of my inquiry into what other remedies or measures of treatment the patient had followed or whether it was spontaneous during the course of our conversations about what the treatment should be.

By Mr. Brodkey:

Q. What was the name of that patient?
Mr. Callaway: What difference does that make?
Trial Examiner Lipscomb: I think it makes no difference.
Mr. Brodkey: I think we are entitled to know that, if the Examiner please. This is a matter of something that can be checked into definitely and I want to do so and I think we should not be needlessly deprived of that pleasure.
Mr. Callaway: I thought you had just two questions.
Mr. Brodkey: That is right, but I am asking a specific

one here within the last short period of time. I want to know the name and address of that patient.

Mr. Callaway: I move that we go back to direct
281 examination.

Trial Examiner Lipscomb: In view of the qualified answer of the Doctor, the Doctor having stated he does not remember whether he brought it up or whether the patient brought it up, the exact reply of the patient, even though he remembered precisely to show that the doctor brought it up or otherwise—I cannot see that that is worth the time and inconvenience or trouble of bringing the witness here.

Their objection is denied and I ask counsel to refrain c further questioning at this time and to return to direct examination.

Mr. Brodkey: I suggest, your Honor, that the question was whether or not the qualifications of the Doctor can best be determined by such a conversation with a patient and the door should not be closed to us for that purpose.

I believe we have that right, and I believe it should not be denied us.

Trial Examiner Lipscomb: Proceed.

Mr. Brodkey: An exception, please.

Mr. Goding: Will your Honor hear me now on the proposition that we have demonstrated—I think, clearly—that this witness is just not qualified to testify concerning consumer reaction.

I think, from his testimony, it will appear or it does appear actually that the discussions that he had es-
282 sentially went to the therapeutic value of the medicaments involved.

Nothing, apparently, was done with regard to these patients concerning the advertising which would qualify him to say what their reactions would be to the advertising. I think the testimony is very clear on that.

Mr. Gettleman: May I say this—just one sentence, and this will be one sentence—the Doctor himself stated he did not discuss the meaning of the words or phrases or terms, and in view of that admission, he admits that he has absolutely no superior knowledge that he can give Your Honor here.

The best knowledge of that would be the party, I presume, but by his own admission, he is certainly not qualified to testify as an expert on advertising by the widest stretch of imagination.

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Mr. Goding: I might further amplify that—not an expert on consumer reaction.

Mr. Brodkey: That is, of course, what we mean.

Mr. Gettleman: Yes, that is right.

Mr. Callaway: Your Honor, may we go off the record?

Trial Examiner Lipscomb: Off the record.

(Discussion off the record.)

Trial Examiner Lipscomb: On the record.

Mr. Goding: As a further statement in support of our objection to any further inquiry of this witness as an
283 expert on consumer reaction to the advertising in issue in this case, I think neither of the authorities cited by my brother, Mr. Callaway, in any way authorize the admission in evidence of testimony from someone or from a doctor with such an inadequate basis of qualification as an expert.

I think all we have in those two cases is the general proposition that a physician whose practice takes him among consumers is in a position, generally, to gauge consumer reaction. I do not think in either of those cases was it demonstrated as we here now demonstrate that there were actually no discussions going to the meaning of advertising of drug products and the consumer reaction thereto.

I think we probably have done something here that was fatal in those two cases, that is to say, there wasn't the sort of prior cross-examination of the proposed expert before his proposed testimony was admitted in evidence.

I ask that Your Honor rule inadmissible the pending question and disqualify this eminent doctor as an expert on consumer reaction to the advertising now in issue.

Trial Examiner Lipscomb: Is there a pending question? For the sake of clarity, let the pending question be repeated by Mr. Callaway.

Direct Examination by Mr. Callaway.

Q. Doctor, I show you Commission's Exhibits 1 to
284 31, inclusive, and also Commission's Exhibit No. 37, and ask you what, in your opinion, patients suffering from various types of rheumatism, arthritis and allied conditions would be likely to understand from these various advertisments as to the effectiveness of this preparation as a treatment for their condition?

Trial Examiner Lipscomb: Now, there has been objec-

tions to that by all counsel for the respondents. The objections are duly noted and overruled.

Mr. Brodkey: There will be an exception, of course, to that ruling.

Trial Examiner Lipscomb: May I ask you, sir,—you could leave off that "of course". Do not tempt the Trial Examiner too far.

Off the record.

(Discussion off the record.)

Trial Examiner Lipscomb: On the record.

We will recess at this time for lunch until 1:45 this afternoon.

(Whereupon, at 12:45 p.m., a recess was taken until 1:15 p,m., this day.)

285 Afternoon Session.

1:15 p.m.

Trial Examiner Lipscomb: The hearing will come to order.

You may proceed.

EDWARD F. ROSENBERG, resumed the stand and testified further as follows:

Redirect Examination (continued).

Mr. Callaway: Miss Reporter, will you please read the pending question?

(The reporter read the question as follows:

"Q. Doctor, I show you Commission's Exhibits 1 to 31, inclusive, and also Commission's Exhibit No. 37 and ask you what, in your opinion, patients suffering from various types of rheumatism, arthritis and allied conditions would be likely to understand from these various advertisements as to the effectiveness of this preparation as a treatment for their condition?")

The Witness: Yes, sir, I think they will understand that this is being advertised as an effective treatment.

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By Mr. Callaway:

Q. Doctor, what, in your opinion, would they be likely to understand would be the effect of this preparation
286 towards arresting the progress of such conditions?

Mr. Gettleman: I object to that question, if the Examiner please, on the same grounds as previously stated.

You are calling for a conclusion that is absolutely within the mind of another person or persons, and I submit this doctor is wholly incompetent to testify as to what is in another person's mind.

Trial Examiner Lipscomb: Miss Reporter, please read the question.

(The reporter read the question as follows:

"Q. Doctor, what, in your opinion, would they be likely to understand would be the effect of this preparation towards arresting the progress of such conditions?")

Mr. Goding: May I add this, that all objections previously made, all grounds of objections that we have made as to the competency of this witness as an expert on consumer reaction may be treated as having been presented for this question and all further inquiry along this line.

Trial Examiner Lipscomb: That is right, sir. It will be so regarded.

Inasmuch as the question calls for the opinion of the Doctor as to the reaction of patients, I think it is appropriate and, consequently, the objection is overruled.

You may answer the question.

287 Mr. Callaway: Do you remember the question?

The Witness: Yes, sir, I do.

I believe they would consider that this remedy which is advertised would be capable of arresting the progress.

By Mr. Callaway:

Q. What, in your opinion, would they be likely to understand from this advertising as to the effectiveness of this preparation in correcting the underlying causes of these conditions?

Mr. Gettleman: The same objection, if the Examiner please.

Trial Examiner Lipscomb: Yes, the same ruling.

The Witness: I believe they would consider the advertising claimed that this product would be effective in correcting underlying causes.

By Mr. Callaway:

Q. What, in your opinion, would they be likely to understand from this advertising as to the effectiveness of this preparation as a cure for these conditions?

Mr. Gettleman: Objection to that question, if the Examiner please.

Trial Examiner Lipscomb: Objection sustained. Exception noted.

Mr. Gettleman: You meant overruled, if Your Honor please?

Trial Examiner Lipscomb: Yes, I am sorry. Maybe
288 I did misspeak myself.

The objection is overruled.

The Witness: I believe they would consider the advertising to indicate that this product is advertised as a cure.

By Mr. Callaway:

Q. What, in your opinion, would they be likely to understand from this advertising as to the effectiveness of this preparation in preventing a recurrence of these conditions?

Mr. Gettleman: Objection to that question, if the Examiner please.

Trial Examiner Lipscomb: The objection is overruled. You may answer the question, Doctor.

The Witness: I believe they would consider this advertising to indicate that the product supposedly would prevent recurrences.

By Mr. Callaway:

Q. What, in your opinion, would they be likely to understand from this advertising as to the effect of this preparation on the symptoms and manifestations, including the aches, pains and discomforts of these conditions?

Mr. Gettleman: Objection to that question, if the Examiner please.

Trial Examiner Lipscomb: Objection overruled.

The Witness: I believe they would consider that
289 this advertising indicated the product to be effective in controlling the symptoms and manifestations, including the aches, pains—and excuse me, was there more to that question?

Mr. Callaway: Aches, pains, and discomforts.

The Witness: And discomforts.

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By Mr. Callaway:

Q. Now, in regard to the pain, what would they understand from this advertising, in your opinion, as to the effect of this preparation on the pains?

Mr. Gettleman: Objection to that question, if the Examiner please.

Trial Examiner Lipscomb: Objection overruled.

The Witness: I believe they would consider the advertising to indicate that this medicine, that this drug preparation would relieve the pains.

By Mr. Callaway:

Q. All the pains?

A. Yes, sir, all of the pains.

Q. Now, Doctor, if you will turn there to Commission's Exhibit No. 1 in the volume which you have in front of you—have you found that?

A. Yes, sir, I have.

Q. I desire to call your attention to the description in that Commission's Exhibit of Imdrin as: "The brand
290 new safe and reliable way to cure pain that's being prescribed by many doctors to bring quick, pleasant relief from arthritic pain, stiffness and swelling."

Now, Doctor, in your opinion, if a person suffering from any of the various types of rheumatism, arthritis, or any of the allied conditions were relieved of the pain, stiffness and swelling, what would he think in regard to whether or not he was cured of the condition from which he had been previously suffering?

Mr. Gettleman: If the Examiner please, I will object to that. That is strictly calling for this doctor here to tell us what is in the mind of others that are actually using the product.

I submit it is highly improbable that this doctor or any other doctor would know what is in the mind of others.

Trial Examiner Lipscomb: Please read the question.

(The reporter read the question as follows:

"Q. I desire to call you attention to the description in that Commission Exhibit of Imdrin as: 'The brand new safe and reliable way to cure pain that's being prescribed by many doctors to bring quick, pleasant relief from arthritic pain, stiffness and swelling.'

"Now, Doctor, in your opinion, if a person suffering from any of the various types of rheumatism, arth-
291 ritis, or any of the allied conditions were relieved of

the pain, stiffness and swelling, what would he think in regard to whether or not he was cured of the condition from which he had been previously suffering?")

Mr. Goding: May I say this?

Trial Examiner Lipscomb: Yes.

Mr. Goding: In further enforcement of the objection, we are now beyond the point of expertees with regard to consumer reaction to advertising.

We are now projecting into the mind of a purchaser at at a time subsequent to the reading of the advertising and after some condition has changed, and at that point the doctor is now asked to give his opinion as to the thinking process of the patient.

I think it is highly incompetent.

Trial Examiner Lipscomb: Mr. Callaway, do you wish to make a reply to the objection before I rule?

Mr. Callaway: Yes.

If your Honor please, here is a man who has treated people for many years in all of these conditions. Who, better than he, would know what the—

Mr. Goding: The patient.

Mr. Callaway: The patient would not. We are not relating this to any one patient. We are relating it to 292 any number of patients.

It is the effect upon the mind of the reader of the advertising, and this doctor has had an opportunity to observe that.

Mr. Gettleman: If the Examiner please, it is utterly impossible for this witness to know what is in the minds of other people. As Mr. Callaway said, he is not projecting it as to one, but many, which just multiplies the improbability of the entire situation.

He is calling for a reading of the minds of others. I think the question is highly objectionable.

Mr. Callaway: It is the same argument that we took up about an hour before.

Mr. Goding: It is not.

Trial Examiner Lipscomb: Off the record.

(Discussion off the record.)

Trial Examiner Lipscomb: On the record.

Mr. Callaway: I will withdraw the question.

By Mr. Callaway:

Q. Doctor, referring again to the advertising which I have just quoted to you, if a person suffering from any

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of the various types of rheumatism or arthritis or allied conditions were promised in an advertisement relief from pain, stiffness and swelling, what, in your opinion, would he think in regard to whether he was being promised
293 a cure for the condition from which he was suffering?

Mr. Gettleman: If the Examiner please, I think that question is objectionable throughout, presupposing promises and calling for the doctor's opinion again as to what others might think.

I think the question is a compounded one and it is badly put throughout and is objectionable.

Trial Examiner Lipscomb: I think that this question is subject to the same frailties as the previous question which was withdrawn and that it probably goes too far.

Mr. Callaway: All right, sir. I will withdraw that one, then.

By Mr. Callaway:

Q. Doctor, from the wording of this Commission Exhibit, Exhibit No. 1, what, in your opinion, would a person suffering from arthritis, rheumatism, or allied conditions understand to be the effectiveness of this preparation as a treatment for such conditions?

Mr. Gettleman: Same objection, if the Examiner please, for the same reasons.

Trial Examiner Lipscomb: Off the record.

(Discussion off the record.)

Trial Examiner Lipscomb: On the record.

Objection overruled. Answer the question.

The Witness: I believe they would consider this
294 advertising to indicate that this is being sold as an effective treatment of these conditions.

By Mr. Callaway:

Q. Now, Doctor, from this advertisement, what, in your opinion, would a person suffering from arthritis, rheumatism or other allied conditions understand would be the effectiveness of this preparation in arresting the progress of such conditions?

Mr. Goding: Are you still referring to Exhibit No. 1?

Mr. Callaway. Yes.

Mr. Gettleman: Same objection.

Trial Examiner Lipscomb: I understand you are objecting to this entire line of questioning. There will be no technical advantage taken of you on that.

The Witness: I believe they will consider this product as one capable of arresting the progress.

By Mr. Callaway:

Q. Doctor, what, in your opinion, would they be likely to understand from this advertising as to the effectiveness of this preparation as a cure for these conditions?

A. I believe they would understand that this product is being represented as one capable of effecting a cure.

Q. Doctor, what, in your opinion, would they understand would be the effect of this prepartion on the aches, pains and discomforts of such conditions?

295 A. I believe they would understand that the aches, pains and discomforts would be relieved.

Q. Completely?

A. Completely.

Q. Now, Doctor, I call your attention to Commission's Exhibit No. 2. Do you have it there in front of you?

A. Yes, sir.

Q. I call your particular attention to this language: "Imdrin contains a remarkable research discovery! * * * that not only stops pain, helps relieve swelling, but acts to uncork the joints!"

What, in your opinion, would a person suffering from any kind of arthritis, rheumatism, neuritis, sciatica, gout, neuralgia, fibrositis or bursitis understand this language, "uncork the joints", to mean?

Mr. Gettleman: Objection to that question, if the Examiner please.

Trial Examiner Lipscomb: Overruled.

The Witness: I believe they would understand this remedy as being advertised as capable of limbering stiffened joints.

By Mr. Callaway:

Q. Now, I also call your attention to the following language, also in Commission's Exhibit No. 2: "Users of Imdrin report that they have resumed normal living.

296 For them the aching joints and muscles are a thing of the past."

What, in your opinion, would sufferers from rheumatism, arthritis, neuritis, sciatica, gout, neuralgia, fibrositis or bursitis understand from this quoted language in the context in which it is used as to the effectiveness of this preparation as a treatment for this condition?

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Mr. Gettleman: Objection, if the Examiner please.
Trial Examiner Lipscomb: Objection overruled.
Mr. Gettleman: Exception.
The Witness: I believe they would consider this advertising to indicate that the product is an effective treatment.

By Mr. Callaway:

Q. What, in your opinion, would they understand from this quoted language in the context in which it is used as to the effectiveness of this preparation in arresting the progress of these conditions?

A. They would consider that this is being advertised as capable of arresting the progress.

Q. What, in your opinion, would they understand from this quoted language in the context in which it is used as to the effectiveness of this preparation in correcting the underlying causes of such conditions?

A. They would accept this advertising as showing that the product is being sold as able to correct the under-
297 lying causes.

Q. What, in your opinion, would they understand from this quoted language in the context in which it is used as to the effectiveness of this preparation as a cure for these conditions?

A. Sir, I think they would consider that the advertising is supposed to indicate a product which is capable of curing their disease.

Q. What, in your opinion, would they understand from this quoted language in the context in which it is used as an adequate, effective and reliable treatment for the symptoms and manifestations of these conditions?

A. They would consider the advertising to indicate that this preparation would make the symptoms disappear, cause the manifestations to go away.

Q. What, in your opinion—now, this may be repeating a little bit—what, in your opinion, would they understand from this quoted language in the context in which it is used as to the effect of this preparation on the pain of these conditions?

A. They would consider that the effect would be to relieve the pain, that the advertising claim is for a product which is capable of relieving the pain.

Q. Completely?

A. Completely.

298 Mr. Gettleman: I will object to that addition by counsel. It is strictly leading. I think it is unfair just to put exactly the words in his mouth.

Mr. Brodkey: He has done it every time so far.

Trial Examiner Lipscomb: The suggested part will be stricken from the record if you wish.

Mr. Brodkey: May that obtain with respect to each of the three instances? I believe it was put in that form three times.

Trial Examiner Lipscomb: No, I believe it was just as to the last. Counsel will refrain and avoid leading questions.

By Mr. Callaway:

Q. Doctor, I call you attention to Commission's Exhibit No. 4. Do you have that in front of you now?

A. Yes, sir, I have it.

Q. I call your special attention to this language: "We will tell you about Imdrin, the only tablets scientifically compounded with a new ingredient that not only stops pain, helps reduce swelling, but acts to uncork the joints • • • Imdrin, which has helped so many folks to again regain restful sleep, to resume normal occupations and once against to lead rich, active lives."

And then, skipping a little bit in the advertisement, "Insist on Imdrin for prolonged relief from the pains

299 of arthritis, rheumatism, sciatica and neuritis."

Now, Doctor, in addition to the language quoted to you from the other exhibits, this advertisement also states, "Insist on Imdrin for prolonged relief from the pains of arthritis, rheumatism, sciatica and neuritis."

Doctor, from this last quoted language, what, in your opinion, would persons suffering from any of these conditions understand would be the effectiveness of this preparation as a treatment for such conditions?

A. They would consider it advertised as an effective treatment.

Q. What, in your opinion, would they understand from this quotation in the context in which it is used as to the effect of this preparation in arresting the progress of these conditions?

A. They would consider it advertised as capable of arresting the progress.

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Q. What, in your opinion, would they understand from this quotations in the context in which it is used as to the effect of this preparation in correcting the underlying causes of such conditions?

A. They would consider it as advertised as being capable of correcting underlying causes.

Q. And what, in your opinion, would they understand from this quotation in the context in which it is used
300 as to the use of this preparation as a cure for these conditions?

A. They would consider it advertised as a curative remedy.

Q. What, in your opinion, would they understand from this quotation in the context in which it is used as to the effectiveness of this preparation as a treatment for the symptoms and manifestations of these conditions?

A. They would consider it advertised as an effective treatment for the symptoms and manifestations.

Q. What, in your opinion, would they understand would be the effect of this preparation on the pain of these conditions?

A. They would consider it advertised as capable of relieving the pain.

Q. Now, I call your attention to Commission's Exhibit No. 8 where it is stated—and I quote—"even people who have suffered for 20 years were able to live free of pain • • • like happy human beings once again. Do not give up hope! Imdrin works internally • • • promises you a better life."

Doctor, what, in your opinion, would people suffering from rheumatism and arthritis understand from this language in the context in which it is used as to the effectiveness of this preparation as a treatment for such conditions?

A. They would consider the advertising of a product that would be effective as a treatment.

Q. What would they understand to be its effectiveness in arresting the progress of these conditions?

301 A. They would consider it advertising a product capable of arresting the progress.

Q. What would they understand to be its effectiveness in correcting the underlying causes of such conditions?

A. They would consider it advertising a product capable of correcting the underlying causes.

Q. And what would they understand to be its effectiveness as a cure for these conditions?

A. They would consider it advertising a product which is supposedly a cure.

Q. What would they understand as to the effectiveness as a treatment for the symptoms and manifestations of these conditions, including the pain?

A. They would consider it advertising a product which is supposed to relieve the symptoms and manifestations, including the pain.

Q. Now, Doctor, I call your attention to Commission's Exhibit No. 11. Do you see it there?

A. Yes, sir, I have it.

Q. I call your particular attention to the caption, "Rheumatic, arthritic sufferers."

Now, also turn to Commission's Exhibit No. 22. Do you find that there?

A. Yes, sir.

Q. Note the heading of Commission's Exhibit No. 22.

302 Now, also turn to Commission's Exhibit No. 20 and note the heading of that.

I am taking each number of them here and just referring to the various headings of them.

Note the heading there in Commission's Exhibit No. 20, reading in large type, "Amazing new discovery for rheumatism, arthritis", and in smaller type, "No faster arthritic pain relief known. Safe, hospital tested—"

Mr. Goding: Excuse me, correction.

Mr. Callaway: (Continuing.) —"No faster pain relief known * * * safe, hospital tested", followed by the words "stops swelling * * * uncorks joints * * * contains sensational new research discovery."

Doctor, I would like to ask you what, in your opinion, would sufferers from rheumatism and arthritis understand from the heading of each of these exhibits just referred to as to the effectiveness of the preparation for treatment of such conditions?

Mr. Goding: We object, and this is a new ground.

I do not think it is fair to seek response to the reaction, consumer reaction, by isolating these three titles referred to, these three headings. I think, obviously, they are all part of the same message and I would suggest that Your Honor observe them.

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Mr. Callaway: Now, they each carry a message of
303 their own.

Mr. Goding: That may be, but I think in view of the context and physical setup, that they should be treated together.

Apart from the objections we have already made, if it were competent—and we insist it is not—however, I think direction should be to the entire heading. He can talk about what he things in combination they mean.

Mr. Callaway: I quoted the whole heading of this advertisement.

Mr. Goding: But you are referring to the expression of each line. I think that is improper.

Trial Examiner Lipscomb: The Trial Examiner thinks that the total effect of the advertisement should be considered.

Mr. Callaway: Well, all right, then. Strike that question.

By Mr. Callaway:

Q. Let's just refer to Commission's Exhibit No. 20, then, Doctor, the one you have there.

Now, then, in your opinion, what would sufferers from rheumatism and arthritis understand from this exhibit as to the effectiveness of the preparation as a treatment for such conditions?

Mr. Goding: Now, just a minute—

Mr. Callaway: The whole advertisement.

304 Mr. Goding: I do not want to be needlessly technical, but I think in view of the very broad nature of the question now, unless it appears that the doctor very recently has read this whole ad, he should stop and read it.

I think that is the only fair thing to do.

If my brother seeks to limit the inquiry to the heading or the caption, that is one thing, but if he is going to inquire about the whole ad, I think it should appear in the record that the doctor very recently read the ad, to the point where he has a very good memory so that he knows the substance of the whole ad, or he should not be allowed to answer the question unless he reads it.

Mr. Callaway: I do not understand. When I asked him about the heading, he objected, and when I asked about the whole ad, he objects to that, too.

Trial Examiner Lipscomb: Doctor, have you recently read the entire advertisement?

The Witness: No, sir.

Trial Examiner Lipscomb: Well, will you take a few minutes to go over the advertisement to see the effect of the entire advertisement as to consumer reaction.

Let the record show that the doctor is now examining, reading the entire exhibit.

By Mr. Callaway:

Q. Now, Doctor, have you read that whole adver-
305 tisement in detail?

A. Yes, I think I read every word of it.

Q. What, in your opinion, would persons suffering from rheumatism, arthritis and allied conditions understand from this advertisement, that is, Commission's Exhibit No. 20, as to the effectiveness of this preparation as a treatment for such conditions?

A. Sir, I believe they would consider it advertising a remedy which, supposedly, is an effective treatment.

Q. And what would they understand would be its effect in arresting the progress of such conditions?

A. They would consider it advertising a remedy which is claimed to be able to arrest the progress.

Q. And what would they understand to be its effectiveness in correcting the underlying causes of such conditions?

A. They would consider it as advertising a remedy capable of correcting underlying causes.

Q. And what would they understand as to its effectiveness as a cure for these conditions?

A. Probably they would consider it advertising a remedy claimed to be a cure.

Q. And what would they understand as to the effectiveness of the preparation as a treatment for the symptoms and manifestations of these conditions?

A. They would consider it advertising a remedy
306 which is an effective, or claimed to be an effective remedy for the symptoms and manifestations, and capable of relieving the pain.

Q. Doctor, turn there to Commission's Exhibit No. 13, if you do not mind, please, sir.

Do you see there this language—and I quote—"Men, why give up your active life because of any rheumatic, arthritic or neuritic aches and pains! Join the happy ranks of former sufferers who have banished the drag of these irritating ailments with Imdrin."

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In your opinion, what would people suffering from rheumatism, arthritis or neuritis understand from this language in the context in which it is used as to the effectiveness of this preparation as a treatment for such conditions?

A. They would consider it advertising a product which is claimed to be an effective treatment.

Q. And what would they consider as to the effectiveness in arresting the progress of these conditions?

A. They would consider it advertised as capable of arresting the progress.

Q. And what would they understand to be its effectiveness in correcting the underlying causes of these conditions?

A. They would consider it as able to correct the underlying causes.

Q. Or as a cure for these conditions?

A. They would consider it advertised as a cure.

307 Q. Or as a treatment for the symptoms and manifestations of these conditions?

A. They would consider it advertised as an effective treatment for the symptoms and manifestations.

Q. What would they understand would be the effect of this preparation on the pains of these conditions?

A. They would consider it advertised as able to relieve the pain.

Q. Now, Doctor, turn there to Commission's Exhibit No. 37—that is the leaflet in there, Doctor.

Now, as the exhibit is in the record, I would like for you to read the right hand half of the first page. I will not quote it in the record because it is too long.

Mr. Goding: Well, maybe you could identify it by the caption "Resume comfortable living."

Mr. Callaway: Yes, and "Fast long-lasting relief," and "Imdrin can help you." That is what is said on those two pages.

The Witness: Sir, I reviewed this pamphlet yesterday and I think I remember the context of the section that you mention. I recognize that section.

By Mr. Callaway:

Q. Now, Doctor, from that, in your opinion, what would people suffering from rheumatism, arthritis, neuritis, or allied conditions understand would be the effectiveness

308 of this preparation as a treatment for such conditions?

A. They would consider it advertised as an effective treatment.

Q. What would they understand as to the effectiveness in arresting the progress of these conditions?

A. They would consider it advertised as able to correct the progress.

Q. What would they understand would be its effectiveness in correcting the underlying causes of such conditions?

A. They would understand it capable of correcting those underlying causes.

Q. What would they understand as to the effectiveness as a cure for these conditions?

A. They would understand it as a drug advertised to effect cures of these conditions.

Q. What would they understand to be its effectiveness for the treatment of the symptoms and manifestations of these conditions?

A. They would consider it advertised to be able to relieve the symptoms and manifestations.

Q. What would they understand would be the effect of this preparation on the aches, pains and discomforts of these conditions?

A. They would consider it advertised to be able to relieve the aches, pains and discomforts.

309 Q. Now, Doctor, the heading in Commission's Exhibit No. 20 contains these words, "Amazing new discovery for rheumatism, arthritis—" do you find it there?

A. Yes, I have it.

Q. From your knowledge as a physician, from your experience in the treatment of arthritis and rheumatic conditions, in your opinion, can respondents' preparation be regarded as an amazing new discovery?

Mr. Gettleman: Same objection as noted.

The Witness: No, sir.

Mr. Goding: Excuse me just a minute.

Mr. Callaway: Was there an answer?

Trial Examiner Lipscomb: Off the record.

(Discussion off the record.)

Trial Examiner Lipscomb: On the record.

By Mr. Callaway:

Q. Doctor, have you seen the complaint in this case?

A. Yes, sir.

Q. I believe you have a copy of it, have you not?

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A. Yes, sir, I have.

Q. And have you read the formula and directions for use of this preparation?

A. Yes, sir, I read them.

Q. Now, Doctor, with your knowledge of the formula for this preparation and the directions for use as set
310 forth in the complaint and from your knowledge as a physician and your experience in the treatment of arthritic and rheumatic conditions, in your opinion, can respondents' preparation be properly designated as an amazing new discovery for rheumatism or arthritis?

A. No, sir, I do not think it can be.

Q. Now, Doctor, I will call your attention there to Commission's Exhibit No. 10 and I want to quote the following language:

"If you have suffered the tortures of the damned because of rheumatism and arthritic pain, swelling and stiffness, get up mornings dreading suffering the day may hold and do it day after day, month after month, year after year—", and I also call your attention to the statement in Commission's Exhibit No. 19, if you will turn to that; I think you will find it on the left hand side, where it says: "Medical science developed the amazing wonder-working drugs sulfa and penicillin."

A. Yes.

Q. And, "Then turned attention to relieving the agonizing pains caused by rheumatism and arthritis."

Doctor, in your opinion, to patients suffering from various types of rheumatism and arthritis, what does the word "torture" and the word "agony" mean?

One of these advertisements refers to the "tortures of the damned," and the other refers to the "agonizing pains."

311 Now, I want to know what, in your opinion, sufferers from these diseases understand to be the "torture" and "agony"?

Mr. Gettleman: Objection to that question, if Your Honor please. That calls for a definition of words that are completely within the scope of third parties.

I do not know how this doctor was qualified or how he could be qualified, or how he is qualified to tell us what others would understand by the meaning of those words. I think it is highly improper.

Mr. Goding: There is this further basis of objection.

Mr. Callaway: Wait a minute. Of course, I mean in regard to the way they are used in relation to arthritis and rheumatism.

Mr. Goding: There is this further basis of objection, if Your Honor please. I think it is well accepted now that in any attempt to interpret an advertisement, it is very unfair to take from the context single words. I think the accepted practice is to read the whole advertisement and then ask questions.

Mr. Gettleman: I can shorten this whole hearing if the Examiner wishes. I mean you can go ahead and ask any questions and have the reporter write it up and we will cross-examine next time.

I mean, as far as we are concerned, we will have a pending objection. I mean there is no need for us to sit
312 here—this will take a week or two.

You go ahead and just ask the questions and we will have the transcript written up and then we will cross-examine after we have the transcript written up.

Mr. Callaway: Well, there is a pending question and objection.

Trial Examiner Lipscomb: The objection is overruled. The Doctor may answer.

Mr. Callaway: Do you remember the question?

The Witness: Yes. I believe the patients reading the advertisement, considering these sentences, these words, phrases and the context in which they appear here, would picture in their minds the dreadful, deformed, pain-ridden condition of an individual with severe arthritis, compound arthritis, probably, arthritis of any one of several kinds, but they would have a picture of great misery and severe crippling and serious deformity.

By Mr. Callaway:

Q. Now, Doctor, turn there to Commission's Exhibit No. 20, again, if you please.

Calling your attention to a series of pictures in the center of the page, does that coincide in your mind with what is meant by "torture" and "agony"?

Mr. Gettleman: I object to that question, if the Examiner please. That is leading and that is exactly what
313 has been going on throughout.

Trial Examiner Lipscomb: I think that question is objectionable.

Mr. Callaway: Well, I will withdraw it.

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By Mr. Callaway:

Q. Now, Doctor, I am through with the questions on the advertising, if you please.

I want to ask you a few more questions, however.

Doctor, what is sciatica?

A. The term "sciatica" refers to an ailment which is manifested by pain along the course of the sciatic nerve.

Q. What are some of the causes of sciatica, Doctor?

A. Sir, there are many causes for sciatica. Any one of a number of diseased conditions which can cause a pressure on or irritation of or a disease of the sciatic nerve, or of its roots can give rise to this symptom.

Q. Could you name some of the diseases that could do that?

A. Yes. You commonly see sciatica caused by pressure exerted on the roots of the sciatic nerve by a tumor or neoplasm.

Sometimes we see sciatica which is the result of one of the diseases which we classify as fibrositis, an ailment which is an irritation or an inflammation of the sheath of the sciatic nerve.

Sometimes sciatica is a result of pressure on the root of the sciatic nerve by the overgrowth of bone, of bone
314 margins or joint margins which occur in certain forms of arthritis.

There are many others.

Q. May metabolic disturbances cause sciatica?

A. Yes, we think so.

Mr. Gettleman: I object to that question and ask that the answer be stricken. That is certainly a leading question if there ever was one.

Why doesn't he ask him what other causes might produce that result?

Mr. Callaway: Excuse me, I did not intend to lead. I am sorry.

Trial Examiner Lipscomb: I am sure counsel did not intend to lead. I will strike the answer and ask counsel to reframe his question.

By Mr. Callaway:

Q. Doctor, would each of the causes of sciatica which you have mentioned require essentially a different kind of treatment?

A. That is certainly true.

Q. Is there any drug or combination of drugs which, in your opinion, can restore to normal the pathological changes which may occur in and give rise to sciatica?

A. No, sir, there is no drug.

Mr. Gettleman: That question was answered before I had a chance to object.

315 We go back to the original situation in which we say our advertisements say nothing about pathological changes. It is even nonsensical to infer that we talk about pathological changes and we object.

Trial Examiner Lipscomb: Do you wish to reply, Mr. Callaway?

Mr. Callaway: No. The Doctor testified it implied a cure, and a cure would mean an arrest of the pathological condition caused by it.

Mr. Gettleman: That is absurd. If a joint is diseased, I would like to see wherein in the advertisement it states anything to the effect that it would restore or bring about regeneration to bones, for instance.

Mr. Callaway: I think the advertisements go too far.

Trial Examiner Lipscomb: Objection overruled.

Mr. Gettleman: Exception.

Mr. Callaway: Now, he has already answered that question, I believe.

By Mr. Callaway:

Q. Doctor, what is the predominant symptom of sciatica?

A. The most common symptom is pain along the course of the sciatic nerve; pain in the back of the leg and various portions of the lower extremities.

Q. I believe you say you have seen the formula for the product called Imdrin in the complaint and the direc-

316 tions for use as set forth in the complaint?

A. Yes, sir, I have seen it.

Q. In your opinion, what effect would Imdrin, taken as directed, have on the pains of sciatica?

A. In my opinion, the only effect of this preparation on sciatica might be to—

Q. On the pains of sciatica.

A. On the pains of sciatica, it might afford temporary relief from some mild pain in the area of the sciatic nerve.

Q. Doctor, in your opinion, can Imdrin, taken as directed, be relied on to usually or ordinarly relieve the pains of sciatica completely?

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A. No, sir, it cannot.

Q. Now, Doctor, suppose that a dose of Imdrin were doubled. In your opinion, what effect would double the dose of Imdrin have on that pain?

Mr. Gettleman: I object to that. There is nothing in the advertisement about doubling the dosage. We have one dosage.

Mr. Callaway: I will grant you that.

Mr. Gettleman: And that is all that is germane to these issues.

Mr. Callaway: I think we ought to clear up for the Examiner the effect or lack of effect of this preparation. I can envisage a situation where they might double the
317 dose and then come back and advertise the same way again and then we would be—well, we say "used as directed."

Mr. Goding: I think Mr. Callaway's conjectural concern really could be treated as an absurdity.

We could conjecture from now until dooms-day looking for a cease and desist order involving a multiplicity of issues. We are trying issues that have been enjoined by the pleadings.

Mr. Callaway: I do think I am entitled to bring out how completely ineffective this preparation is, and that is what I am seeking to do by that question.

Mr. Gettleman: That question is objected to. There is a pending objection to that question.

Trial Examiner Lipscomb: Inasmuch as the answer to the question may tend to show the potency and power of the drug and more fully inform the Trial Examiner and the Commission, I think it ought to be answered.

The objection is overruled.

Mr. Gettleman: Exception.

Mr. Callaway: Do you remember the question, Doctor?

The Witness: Yes, sir.

I believe if the dose were doubled, the effect would not be significantly increased.

By Mr. Callaway:

Q. Doctor, what is neuritis?

318 A. Sir, the word "neuritis" means inflammation of nerves.

Q. What are some of the causes of neuritis?

A. There are many causes of neuritis.

Q. Would you give us some?

A. I have mentioned in answer to this question some causes of one particular form of neuritis.

Q. Is sciatica a form of neuritis?

A. Sciatica is one form of neuritis; sciatica is not a different disease then neuritis. It is one of the members of the family of neuritis, but there are other causes; for example, in sections in the body, localized infections, even remote from nerves, may give rise to toxic substances which, if absorbed into the system, cause damage to nerves.

We see neuritis, also, which is caused by an idiosyncracy or toxic acidity from the use of various drugs.

We see neuritis which is the result of the deprivation or the absence of certain chemical substances of a vitamin.

We see neuritis which is the result of the presence in the body of a peculiar metabolic disturbance connected with diabetes.

We see neuritis which is the result of an infection of the nerve with the germ which causes syphilis and so forth.

There are many such causes and, therefore, many types of neuritis.

Q. Now, Doctor, would each of the causes of neu-
319 ritis which you have mentioned require essentially a different kind of treatment?

A. Yes, sir.

Q. Doctor, in your opinion, is there any drug or combination of drugs which can restore to normal the various pathological changes which may occur in neuritis?

A. No, sir.

Mr. Gettleman: Objection to that question, if the Examiner please, for the same reasons given.

Trial Examiner Lipscomb: Overruled.

Mr. Gettleman: Exception.

By Mr. Callaway:

Q. What, in your opinion, is the predominant symptom of neuritis?

A. The usual symptom is pain in the region of the affected nerve, but other symptoms include numbness, weakness of muscle groups which are supplied by those nerves, and sometimes even paralysis.

Q. Doctor, in your opinion, what effect would Imdrin, taken as directed, have on the pain of neuritis?

A. In most instances, sir, I believe it would have little or no effect. I can conceive of some instance of neuritis

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where the pain was extremely mild, almost insignificant, and in such an instance, perhaps this substance might conceivably bring mild, temporary relief.

320 Q. Doctor, in your opinion, can Imdrin, taken as directed, be relied upon to usually or ordinarily relieve the pains of neuritis completely?

A. No, sir.

Q. Now, Doctor, suppose the dosage of Imdrin were doubled above that set forth in the complaint. In your opinion, what effect would Imdrin in that dosage have on the paint of neuritis?

Mr. Goding: Same objection as previously stated.

Mr. Gettleman: Am I right in believing that we have the continuing exceptions in connection with these objections?

Trial Examiner Lipscomb: All right.

The Witness: Sir, I believe that doubling the dose would have very little effect on increasing the ability of this substance to relieve the symptoms.

By Mr. Callaway:

Q. Doctor, what is neuralgia?

A. Well, the word "neuralgia" in medicine refers to a peculiar syndrome of pain, violent spasms of pain which occurs along the course of certain nerves.

Q. What is the predominant symptom of neuralgia?

A. The usual symptom is bursts of pain, lightning-like bursts of pain.

Q. What effect, in your opinion, would Imdrin, taken as directed, have on pains of neuralgia?

A. When taken as directed, this preparation would

321 have little, if any, effect on the neuralgia, on the pain of true neuralgia.

Q. Doctor, could Imdrin, taken as directed, be relied upon to usually or ordinarily relieve the pains of neuralgia completely?

A. No, sir.

Mr. Gettleman: I will object to that question, if the Examiner please. That is leading—"completely".

Mr. Callaway is testifying here.

Trial Examiner Lipscomb: Mr. Callaway, please be careful.

Mr. Callaway: I did not mean that to be leading. I do not see how it is. I am merely asking him if it can do it.

Mr. Gettleman: Ask him and let him tell us if it is complete or partial.

By Mr. Callaway:

Q. Suppose the dosage of Imdrin were doubled. In your opinion, what effect would Imdrin in double the doses set forth in the complaint have on the pains of neuralgia?

A. Sir, I believe it would have little or no effect on the pains of neuralgia even if the dose were doubled.

Q. What is fibrositis?

A. The term "fibrositis" is used in the field to refer to a family of diseases which are manifested by symptoms of aching and stiffness about joints or in various
322 muscle groups and which has as its basis an unknown inflammation of fibrous tissues—therefore, the term "fibrositis".

Q. What is the predominant symptom of fibrositis?

A. The usual symptom is pain and stiffness.

Q. What effect, in your opinion, would Imdrin, taken as directed, have on the pains of fibrositis?

A. Sir, it is my opinion that this preparation would have little or no effect in most instances of fibrositis. Perhaps in some instances where the pain is minor, mild, this preparation might conceivably cause a slight relief temporarily.

Q. Doctor, suppose the dosage of Imdrin were doubled. In your opinion, what effect would Imdrin in double the doses as set forth in the complaint have on fibrositis?

A. I believe the effect would not be notably different if the dosage were doubled.

Q. What is bursitis?

A. The term "bursitis" refers to the inflammation of a bursa.

A bursa is a sac or a space generally adjacent to a joint or about a bony prominence of the body which contains a little fluid, which had as its purpose the action which acts as a shock absorber to provide for the movement of bones and joints, a freer movement of bones and joints, and bursitis refers to inflammation of these sacs.

We see bursitis of many different types—gouty bur-
323 sitis, which has as its cause a gouty inflammation, and we also see bursitis caused by tuberculosis; we see gonorrheal bursitis.

There are some instances of bursitis which have an un-

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known cause, related, perhaps, to rheumatoid arthritis or fibrositis. There are many different kinds of bursitis.

Q. Doctor, would the pathological changes which occur in bursitis vary according to the cause or not?

A. Yes, indeed they would, sir.

Q. Now, would any of the causes of bursitis that you have mentioned require essentially a different kind of treatment?

A. Yes, for the most part, they do.

Q. Doctor, would the time at which appropriate treatment was begun after the onset of the bursitis have any effect on the final outcome of the patient's condition?

A. Yes, I think I can conceive that that would be the case. If bursitis caused by a pus producing germ were not recognized promptly and treated adequately, the result could be serious.

Q. Doctor, in your opinion, is there any drug or combination of drugs which can restore to normal the various pathological changes which may occur in bursitis?

A. No, sir, there is no such drug.

Q. What, in your opinion, Doctor, is the predominant symptom of bursitis?

A. The usual symptom is pain and swelling at the sight of the affected person.

324 Q. In your opinion, what effect would Imdrin, taken as directed, have on the pains of bursitis?

A. Sir, I believe that if it is taken as directed, this preparation would have little effect on most instances of bursitis; perhaps in some very mild cases where the pain is moderate, mild—not moderate, but mild—there might be temporary, partial relief.

Q. Doctor, suppose the dosage of Imdrin were doubled above that set forth in the complaint.

In your opinion, what effect would Imdrin in double the dose have on the pains of bursitis?

A. Sir, I believe it would have little or no additional benefit if taken in twice the dose recommended.

Q. Doctor, what is gout?

A. Sir, gout is a disease which is connected with a disturbance of the metabolic functions of the body, having to do with the absorption, utilization of certain chemical substances, notably uric acid.

Q. What are the pathological changes which may occur in gout, Doctor?

A. In the course of gout, the pathological changes may appear in joints, bones, in cartilages and in a number of internal organs; probably, also, in blood vessels and arteries.

These consist of varying degrees of inflammation, deposits of crystalline material with greater or lesser
325 degrees of surrounding inflammation.

Sometimes these pathologic changes are very severe indeed. For example, a kidney may be utterly destroyed; both kidneys may be utterly destroyed by the manifestations of gout. Joints may be terribly destroyed by the pathologic manifestations of gout.

Whole cords may be caused to disappear under the expanding effect of these terrible inflammatory deposits. Sometimes patients with gout have other symptoms and pass kidney stones, for example, and suffer episodes of bursitis.

Q. Doctor, in your opinion, is there any drug or combination of drugs which can restore to normal structures damaged in gout?

A. No, sir, there is no such drug.

Q. What, in your opinion, is the predominant symptom of gout?

A. Well, the early symptom, at least in the early phases of the disease, is recurring attacks of pain and swelling in the joints.

Q. In your opinion, what effect would Imdrin, taken as directed, have on pain of gout?

A. Sir, in most instances of painful or gouty arthritis, taken as directed, would have little or no effect.

Q. Suppose the dosage of Imdrin set forth in the complaint in this case were doubled.

In your opinion, what effect would Imdrin in doubled dosage have on the pains of gout?

326 A. Sir, I believe the effect would hardly be increased by doubling the dose.

Q. Doctor, what is osteo-arthritis?

A. The term "osteo-arthritis" refers to one of the chronic forms of joint diseases which has as its pathologic characteristic a thorough wearing away, erosion of cartilages, the production of excess bone at the margins of joints.

From the standpoint of the patient, this is a disease which manifests itself as a painful stiffness, creaking of joints, sometimes loss of motion.

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Those are the predominant symptoms.

Q. What are some of the causes of osteo-arthritis?

A. As to some of the most important forms of osteo-arthritis, the so-called primary form, we do not know the cause. It is our supposition that this is connected with wear and tear of excessive use of joints, perhaps in inherited inabilities to stand use.

There are, however, instances of so-called secondary arthritis where the cause can be recognized—for example, osteo-arthritis may result in a joint that has been damaged by a blow, by a crushing injury, by a factor which entered into the joint.

Q. Doctor, does osteo-arthritis present various clinical stages in the course of disease?

A. Yes, indeed it does.

327 Q. Would the different clinical stages of this disease, even from the same cause, require essentially different kinds of treatment or not?

A. Yes, quite so. A patient in an early phase of the disease may require quite a different program or quite a different approach to treatment than would be the case for an individual who has the disease in advanced stages.

Q. Now, Doctor, I do not believe you described for us the pathological changes which occur in osteo-arthritis.

A. I mentioned them briefly in my characterization of the disease, and I said that the primary indication was erosion and atrophy of the cartilage, sometimes wearing away, hypertrophy or overgrowth of the margins of the bone, and there are several additional pathological changes which I will recite if you wish me to.

Q. Well, you might give us one or two.

A. Sometimes this disease is associated with the development of cyst-like cavities in the joints. Sometimes the bony surface which underlies the cartilage becomes greatly thickened and marbleized. Those are the usual symptoms.

Q. In your opinion, is there any drug or combination of drugs which can restore to normal the structures that are damaged in osteo-arthritis?

A. No, there is no such drug.

Q. What are some of the symptoms of osteo-arthritis?

328 A. The usual symptom is pain and stiffness, usually painful stiffness that is aggravated by use.

Q. In your opinion, what effect would Imdrin, taken as directed, have on the pain of osteo,arthritis?

A. Sir, only in those cases where the pain was mild could this product possibly have any effect, and then the effect would certainly be transient, temporary, and only partial, to cause only partial relief.

Q. Now, Doctor, in your opinion, can Imdrin, taken as directed, be relied upon to usually or ordinarily relieve the pains of osteo-arthritis completely?

A. No, sir, it cannot be.

Q. Suppose the dosage of Imdrin were doubled. In your opinion, what effect would Imdrin in that dosage have on his pains of osteo-arthritis?

A. Doubling the does would cause little, if any, increase in the effectiveness of this preparation.

Q. What is rheumatoid arthritis?

A. Rheumatoid arthritis is a chronic, progressive, destructive disease which affects joints and also affects many other organs of the body.

It has a tendency to appear in younger individuals, usually between the ages of 20 and 40.

You also see it in children and aging persons.

It is a disease characterized by swelling, stiffness, 329 limitation of motion in joints.

It causes the patient to feel pain in the neighborhood of his joints; causes him to lose the use of his joints; it causes him, generally, to suffer a deterioration of his general health, loss of weight, sweating; causes disturbances of the blood; causes anemia; disturbances of the proteins in the blood, and so forth.

Q. You have listed, in answer to some of the last questions, some of the pathological changes which occur in these diseases. What are some of the pathological changes which occur in rheumatoid arthritis?

A. As regards the joints, the pathological changes, first of all, cause a thickening of the lining membrane; causes production of excessive fluid in some instances; causes absorption of fluid in other instances; causes damage by invasion of the cartilage and bone by this inflamed lining membrane; causes atrophy of muscles; causes, sometimes, destruction of important portions of the bone ends where the joints will be deformed and one part of the joint will slip away from the other.

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These are some of the manifestations, the pathologic manifestations.

Q. In your opinion, is there any drug or combination of drugs which can restore to normal all of the destructive changes which may occur in rheumatoid arthritis?

330 A. No, sir.

Q. Is the cause of rheumatoid arthritis known?

A. No, sir, the cause is not known.

Q. What are some of the symptoms of rheumatoid arthritis, or you have given us some already?

Mr. Gettleman: I object. He has answered that once.

Mr. Callaway: Yes, I will withdraw that question.

By Mr. Callaway:

Q. Is pain one of the symptoms?

A. Yes, sir.

Q. In your opinion, what effect would Imdrin, taken as directed, have one the pain of rheumatoid arthritis?

A. Taken as directed, it would have little, if any, effect in some cases.

In some cases, there might conceivably be a little temporary partial relief.

Q. In your opinion, can Imdrin, taken as directed, be relied upon to usually or ordinarily relieve the pains of rheumatoid arthritis completely?

A. No, sir.

Q. Suppose the dosage were doubled. In your opinion, what effect would that have on rheumatoid arthritis?

A. The effect would not be notably increased by doubling the dosage.

Q. What is infectious arthritis?

331 A. That term usually refers, at least, in the minds of physicians, to a form of arthritis caused by invasion of the joint by a germ.

Q. What are some of the causes of infectious arthritis?

A. We see infectious arthritis caused by gonorrhea, syphilis, tuberculosis; we see pneumococcal arthritis; we see infectious arthritis caused by the pneumonia germ, by the germ which causes meningitis, and so forth.

Q. Now, would each of the causes of infectious arthritis which you have mentioned require essentially different kinds of treatment?

A. Yes. Each type might very well require quite different forms of treatment.

Q. Doctor, what would be the consequence of delaying appropriate treatment—first, what are some of the pathological changes which occur in infectious arthritis?

A. The pathologic changes depend on the nature of the invading germ.

In several instances these produce peculiar or characteristic pathologic changes, those which result from invasion by the streptococcus, and so forth.

The meningitis germ is characterized by the development or appearance of pus in the joint, and this pus is extremely destructive and evasive. It causes dissolution of portions of the joint, when, with the germ of tuberculosis,

the type of inflammation which results may be some-
332 what different.

There may be pus, but in most instances, the inflammation is characterized by a clear looking fluid, and although terrible destruction may result, this comes at a much slower rate in usual cases.

There are many different types of pathologic changes seen in this type of case, depending on the organism.

Q. Doctor, is there any drug or combination of drugs which can restore to normal structures which may be damaged from infectious arthritis?

A. No, sir.

Q. What are some of the symptoms of infectious arthritis?

A. Depending on the organism which is causative, the symptoms are usually pain and swelling of the joints and varying degrees of systemic symptoms such as fever and weakness.

Q. I believe you said that pain was one of the symptoms. Could you describe for us the character of the pain which may occur in infectious arthritis?

A. Yes, sir. It is variable; there are some instances where the pain is mild or even moderate. However, this is the group of diseases which are commonly manifested by the most severe, excrutiating types of pain.

Q. In your opinion, what effect would Imdrin, taken as directed, have on the pain of infectious arthritis?

A. Sir, I would say that this drug could have little,
333 if any, effect on the pain of most cases of infectious arthritis.

Q. In your opinion, can Imdrin, taken as directed, be relied upon to usually or ordinarily relieve the pain of infectious arthritis completely?

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A. No, sir, it could not and that would be a serious mistake.

Q. And suppose the dosage were doubled.

In your opinion, what effect would it have on the pains of infectious arthritis?

A. I believe that double the dose would cause little, if any, increase on the effectiveness.

Q. Now, Doctor, you indicated to us that there are millions of people in this country suffering from these conditions. Are many of them crippled?

A. Yes, many of them.

Q. Are many bedridden?

A. Yes, sir, quite a few.

Q. Are there many on crutches?

A. Yes, there are many on crutches.

Mr. Gettleman: I object to that, if the Examiner please. That is strictly leading.

Mr. Callaway: Strictly what?

Mr. Gettleman: Leading. You are giving the answers, as a matter of fact.

Trial Examiner Lipscomb: What was the last ques-
334 tion and answer?

(The reporter read the record as follows:

"Q. Are there many on crutches?

"A. Yes, there are many on crutches.")

Mr. Callaway: Maybe I am leading.

Trial Examiner Lipscomb: Yes, the question is susceptible to criticism. Try to refrain from that.

By Mr. Callaway:

Q. You have been talking largely about the effect of Imdrin on the pain of these various conditions.

In your opinion, will Imdrin, taken as directed, arrest the progress or correct the underlying causes of any kinds of arthritis?

A. Sir, I cannot think of a single form of arthritis or rheumatic disease in which this preparation could be relied upon to arrest the progress or to satisfactorily relieve the pain or other symptoms.

Q. Now, do you include in your answer neuralgia?

A. Yes, sir.

Q. Rheumatism?

A. Yes, sir.

Q. Neuritis?

A. Yes, sir.
Q. Bursitis?
A. Yes, sir.
335 Q. Gout?
A. Yes, sir.
Q. Fibrositis?
A. Yes, sir.
Q. Sciatica?
A. Yes, sir.
Q. Now, in your opinion, will Imdrin, taken as directed, cure or prevent the recurrence of any kinds of arthritis?
A. Sir, I cannot think of a single form of arthritis—I do not believe there is any form of arthritis or rheumatism in which this preparation would have the effect you mentioned.
Q. Now, do you include in your answer the same different types of diseases that I mentioned in the previous line of questions?
A. Yes, sir, I include all of them.
Q. All right. In your opinion, Doctor, is Imdrin, taken as directed, an adequate or effective or reliable treatment for any kind of arthritis?
A. No, sir, it is not.
Q. Are you including in that all types of rheumatism?
A. Yes, sir.
Q. Bursitis?
A. Yes, sir.
Q. Gout?
A. Yes, sir.
336 Q. Fibrositis?
A. Yes, sir.
Q. Neuritis?
A. Yes, sir.
Q. Sciatica?
A. Yes, sir.
Q. Neuralgia?
A. Yes, sir.
Q. In your opinion, Doctor, is Imdrin, taken as directed, an adequate, effective or reliable treatment for the symptoms and manifestations of any kind of arthritis?
A. No, sir, it is not, not in my opinion.
Q. Would you include in that rheumatism?
A. Yes, sir.
Q. Gout?

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A. Yes, sir.
Q. Fibrositis?
A. Yes, sir.
Q. Neuralgia?
A. Yes, sir.
Q. Bursitis?
A. Yes, sir.
Q. Sciatica?
A. Yes, sir.

Q. Now, Doctor, you have considered this prepara-
337 tion in the light of the directions for use as stated in the complaint in regard to these last few questions. If the dosage of Imdrin were doubled, would your answers be the same?

A. My answers would be the same.

Mr. Callaway: I think that will complete the direct examination, if Your Honor please.

Trial Examiner Lipscomb: We will have a recess of ten minutes.

(A short recess was taken.)

Trial Examiner Lipscomb: On the record.

Counsel for respondent may cross-examine.

Recross Examination by Mr. Gettleman.

Q. Doctor Rosenberg, you have testified in other cases involving preparations for rheumatism and arthritis, have you not, or the relief of pain in those conditions?

A. In one other case, sir.

Q. Are you now connected with the Chicago Medical College?

A. Yes, sir.

Q. Is that a Grade A school now?

A. Yes, sir.

Q. How long has it been a Grade A school, will you tell us?

A. I do not remember, about a year or two.

Q. Just a short while, is that right?

338 A. Yes.

Q. And you are connected now with the Michael Reese Hospital, is that right?

A. That is correct.

Q. Does the Michael Reese Hospital have a rheumatism or arthritic ward?

A. No, sir.

Q. It does not. The patients that come to the Michael Reese Hospital or to your attention for care suffering with rheumatism or arthritis are ambulant patients, are they not?

A. No, often they are bed cases.

Q. Would the greater majority of them be ambulant cases, Doctor?

A. Yes, the majority of them are ambulant.

Q. And you are also connected with the Mount Sinai Hospital?

A. Yes, sir.

Q. Will you tell us whether or not the Mount Sinai Hospital has any ward or unit specifically set aside for sufferers of rheumatism or arthritis?

A. No, sir, it has not.

Q. And would you say that the majority of the patients that go there for care are ambulant or bedridden?

A. Yes, sir, the majority of them are ambulant.

Q. Doctor, you stated that there are about seven million sufferers of rheumatism and arthritis in the United States.

339 Is not that right?

A. Yes, I gave you the source of that information.

Q. And you have not broken it down to an area, for instance, like Chicago, have you?

A. No, we do not have any figures for Chicago.

Q. And will you tell us if you know by virtue of your experience in Chicago, Doctor, whether any hospital in Chicago has any separate unit or ward for rheumatism or arthritis patients?

A. Well, I do not know that I konw the exact situation in all of the Chicago hospitals. The Hines Hospital has several wards—

Q. No, I am asking you about Chicago.

A. That is in Chicago.

Q. No, it is not.

A. Well, it is in one of the suburbs.

Q. Well, I am asking you about Chicago now.

A. I do not know of any that have a special ward for arthritic patients. We have some rheumatic fever patients here, but not—

Q. And as far as you know, Doctor, would you say from your own knowledge whether or not the majority

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of the patients in the United States that are suffering from rheumatism or arthritis are ambulant patients or bedridden?

A. Yes—

Mr. Callaway: Just a minute. I do not know
340 whether that is competent or not. He objected to his giving the source of the information about the number, and now he wants to get it.

Mr. Gettleman: It was overruled and now we are going to get it.

The Witness: I am sorry, I will have to ask you the question again, please.

Mr. Gettleman: Read the question, please.

(The reporter read the question as follows:

"Q. And as far as you know, Doctor, would you say from your own knowledge whether or not the majority of the patients in the United States that are suffering from rheumatism or arthritis are ambulant patients or bedridden?")

The Witness: The majority are certainly ambulant.

By Mr. Gettleman:

Q. Doctor, you have talked about varying degrees of pain. What degrees of pain are there—will you kindly tell us—in those suffering from the various types of rheumatism or arthritis?

A. Well, we have no specific answer to that question. The best we can do is to refer to them as mild, moderate, severe and so forth.

Q. Is there a standard nomenclature for the degrees of pain in those conditions that you know of?

341 A. Oh, I wouldn't say so, not that I know of, no. It is a matter of judgment how one shall designate the severity of the pain. I would say it is a matter of the judgment of the patient or the physician.

Q. As a matter of fact, pain is subjective as you get it from the patient, is it not?

A. Yes, that is correct.

Q. And it is a matter of the judgment of the patient, also?

A. Yes, and of the physician, the physician's judgment of the patient's remarks.

Q. That is right, and the remarks come from the patient?

A. Yes, that is correct.

Q. Doctor, is it possible that one patient might be suffering with a degree of pain that would bother him more than another person?

A. That certainly is the case all right.

Q. Doctor, would you tell us, do you prescribe salicylates?

A. Yes.

Q. In conditions of rheumatism and arthritis?

A. Yes, sir.

Q. And the various types of rheumatism and arthritis?

A. Now, the last part of the question I do not understand.

Q. Well, you stated, if I remember, on your direct examination that rheumatism, the ordinary rheumatism and arthritis embrace these various other types, is that not right?

342 A. That is correct.

Q. Now, will you tell us whether or not you prescribe salicylates for the relief of pain of rheumatism and arthritis?

A. In some instances, I do.

Q. In what instances?

Mr. Callaway: Now, I think the doctor might be told at this point that he is not limited to yes and no answers. He can explain his answers in any way which he deems fit.

I do not know whether he understands that or not.

Mr. Gettleman: Well, if they call for an explanation, we will be happy to get one; if not, I do not see why we should have a dissertation.

Mr. Callaway: Well, that is a matter for his judgment.

Mr. Gettleman: Well, let's see what the question is and then we will all be able to decide.

What is the question?

(The reporter read the record as follows:

"Q. Now, will you tell us whether or not you prescribe salicylates for the relief of pain of rheumatism and arthritis?

"A. In some instances I do.

"Q. In what instances?")

The Witness: Am I to answer that question?

343 Trial Examiner Lipscomb: Yes, please, Doctor.

The Witness: Well, I will name a few instances which come to my mind.

In cases of patients who are suffering from rheumatoid arthritis, I commonly prescribe salicylates as a measure

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designed to help to temporarily and partially relieve some of the discomforts of that disease.

I would do the same in some cases where the patient is suffering from fibrositis, possibly bursitis.

I might, conceivably, in instances of neuritis, as in some cases of sciatica.

I often prescribe it in instances where patients are suffering from osteo-arthritis.

There are a good many of these diseases where I suggest to patients that they use salicylates for the purpose that I mentioned.

By Mr. Gettleman:

Q. When you say that you suggest that they use it, do you mean that you prescribe it?

A. I recommend it.

Q. You prescribe it?

A. Exactly.

Q. And when you prescribe it, Doctor, and, as you have described it to us, then all they will get from your prescription is partial and temporary relief from their 344 muscular aches and pains, is that right?

A. In the instances I mentioned, that is the purpose.

Q. The purpose of prescribing it is merely for partial and temporary relief?

A. Exactly.

Q. Wouldn't the patient in that instance be happier if he or she got permanent relief or complete relief?

A. From the salicylates?

Q. Yes.

A. Well, I have no doubt that they would be happier, yes.

Q. Or, do I understand that the salicylates will not give permanent relief?

A. No, sir, in the instances that I mentioned salicylates will not give permanent relief.

Q. In other words, what I am trying to get at, Doctor, is that when you prescribe it, you are giving the best combination that you know of to give, the best possible relief of pain to that patient?

A. I think that is true, yes.

Q. And salicylates are used widely throughout the medical profession for the relief of pain—

A. Yes, sir, that is true.

Q. (Continuing.) —of rheumatism and arthritis, is that not right?

A. Yes.

345 Q. Doctor, tell us, you have done some work with Dr. Hench, is that right?

A. Yes, sir.

Q. And that work consisted of clinical work with humans, is that not right?

A. Yes, some of the work did. I would say the large part of the work had to do with clinical work in relation to humans, that is right.

Q. And in addition to your knowledge, in addition to your clinical work, you have also studied the literature, have you not, Doctor?

A. Yes.

Q. And did you do any other investigatory and clinical work with humans other than that performed with Dr. Hench?

A. Oh, yes.

Q. What preparations were used in those instances, Doctor?

A. Well, sir, the investigations, other than those performed by Dr. Hench, include a number which had nothing to do with investigations of preparations of therapeutic agents.

Q. Before I go into this literature, Doctor, will you tell us, did you ever prescribe Imdrin?

A. No, sir.

Q. Did you ever have anyone use it under your supervision?

A. No, sir.

Q. You have no personal knowledge of anyone us-
346 ing it clinically under your direction?

A. No, sir, nobody has used it under my direction.

Q. In other words, you have absolutely no personal experience with the product itself, is that correct?

A. That is correct. I have never used Imdrin nor prescribed it. No one has ever taken it under my direction.

Q. Doctor, in your bibliography, you collaborated with R. F. Kneeland and G. S. Skinner in an article entitled "5 B Ethyl substituted derivatives of barbituric acid."

Do you recall that article which appeared in the Journal American Chemical Society?

A. Yes, sir.

Q. What did that, briefly, have to do with?

A. We were developing some new derivatives of barbi-

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turic acid, searching for a better one than was available then.

That had to do with experiments based on the compounding in the laboratory of new molecules and molecules which had, up to then, previously not been produced.

Q. Was that on animals or humans, Doctor?

A. Sir, that had nothing to do with either. That was a partial report, partial investigation which was done in an organic chemistry laboratory. It had neither to do with humans nor animals.

Q. What part did Mr. Kneeland play in that, may I ask?

A. Well, the paper that was published was a com-
347 pilation of data which resulted from several separate researches, some done by Mr. Skinner and some by me in conjunction with Mr. Skinner, and some done by Mr. Kneeland with Mr. Skinner.

I never worked with Mr. Kneeland, but Mr. Skinner put them together and published the meat of them in a separate paper.

Q. Who is Mr. Kneeland? Is he a Doctor?

A. No, he is an organic chemist.

Q. Did I understand you correctly when you said it was G. S. Skinner who subsequently put the paper together?

A. That is right.

Q. Doctor, will you tell us whether or not the paper entitled "Treatment of Schizophrenia (Dementia Praecox) by insulin hypoglycemia"—do you recall that?

A. Yes, I remember that.

Q. That had nothing to do with rheumatism or arthritis, did it, Doctor?

A. No.

Q. Neither did your first one?

A. No, I would say no. Those papers were the result of work done during the development years, during the years when I was a student.

Q. Oh, were you a student at that time?

A. Yes.

Q. How many of these papers were done while you were a student, do you remember, Doctor?

348 A. You can check that by the dates of the publications in most instances because I have given you the dates of my degrees.

Q. I do not remember—when did you graduate?

A. I graduated—as a student, I refer also to that

period when I was a Fellow in Mayo Foundation. Some of those papers were done during that period and I consider I was a student then.

Q. Well, let's go on to the next one, Doctor, the one that you callaborated with F. P. Moersch, is it?

A. Yes, sir.

Q. "The insulin hypoglycemia treatment of schizophrenia: Results in treated and untreated cases."—that had nothing to do with rheumatism and arthritis, did it?

A. No. Dementia Praecox was the subject under study.

Q. Doctor, with reference to your fourth item here entitled "The present status of the insulin hypoglycemia treatment in schizophrenia", in which you collaborated with F. P. Moersch, R. M. Wilder and B. F. Smith, that also had nothing to do with rheumatism or arthritis?

A. No, sir, not directly, except that I will point out to you, sir, that these preliminary investigations or early papers represented the development of a doctor.

They are some of his early works, that is, where he cuts his teeth, so to speak.

349 Q. Well, outside of cutting the teeth, so to speak, when you say "not directly", it actually had nothing to do with rheumatism or arthritis?

A. That is right.

Q. Nor directly, either?

A. No, I would not say that. They were important to me because they laid the groundwork for the development of a medical man.

Q. Well, let's put it this way, Doctor. Outside of its importance as laying a foundation for you in writing works in the future, this article, likewise, did not deal with rheumatism or arthritis, did it?

A. That is correct.

Q. In reference to your fifth item, Doctor, entitled "Effect of insulin on the concentration of uric acid in the blood", completed in 1938, will you tell us what that had to do with—what did that subject deal with, Doctor?

A. That was the study of the concentration of uric acid in the blood, and the rate of excretion of uric acid following the administration of insulin in varying doses and amounts.

Q. At the time that that was written, were you interested in rheumatism and arthritis?

A. I was interested in it, yes. I had already been in-

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troduced to the subject and had worked in it quite a while and had temporarily left that field.

350 Q. But the subject was not on rheumatism or arthritis as such?

A. Well, no, not directly.

Q. Doctor, in reference to your seventh article entitled "Biochemical observations in hypoglycemia induced by insulin"; "Behaviour of the blood gases in relation to the hypoglycemia state", that also had nothing to do with rheumatism or arthritis, did it?

A. The same comment applies.

Q. In reference to your eighth item on your bibliographical list, Doctor, entitled "Biochemical observations in hypoglycemia induced by insulin, III" will you tell us whether or not that touched on rheumatism or arthritis?

A. The same comment would apply.

Q. Would your same comment apply to your item No. 9 of your bibliographical sheets here, entitled "Biochemical observations in hypoglymeria induced by insulin, IV"?

A. Yes, I would say the same comment.

Q. That was published in 1939. Doctor, will you tell us whether or not you have touched upon the subjects of rheumatism or arthritis in your item No. 9 entitled "Biochemical observations in hypoglycemia induced by insulin"?

A. The same comment there.

Q. With reference to item No. 10, Doctor, entitled "The brain in malignant hypertension", that also did not

351 touch upon the subject of rheumatism or arthritis?

A. The same comment.

Q. In reference to No. 11, entitled "The brain in malignant hypertension: A clinicopathologic study", did that have anything to do with rheumatism or arthritis?

A. The same comment.

Q. In reference to item No. 12, Doctor, in which you collaborated with A. H. Baggenstoss and A. E. Osterberg on the paper entitled "Lipoid Histiocytosis. Report of a case with post-mortem and chemical studies of the spleen", that, also, did not relate to rheumatism or arthritis?

A. Same comment.

Q. Doctor, with reference to item No. 13 which you wrote, an article on chalk gout, entitled "A report of two cases with a brief summary of some previously reported studies on calcinosia", that had to do, I presume, with chalk gout, did it not?

A. Exactly.

Q. And that was a report of two cases, was it not?

A. Exactly.

Q. Item No. 14, Doctor, appears to be a paper that you collaborated with A. H. Baggenstoss, entitled "Cardiac lesions in chronic infections (Rheumatoid Arthritis)".

Who is A. H. Baggenstoss?

A. He is a pathologist who is employed at the Mayo Clinic.

Q. And briefly, what did this paper deal with?

352 A. It was a report of the investigation during which we examined the hearts of a series of patients who had died with rheumatoid arthritis.

Q. Do you remember how many cases you had that you recorded in that instance?

A. About 30.

Q. And that was a study upon those who had died, is that not right?

A. Exactly.

Q. Was there any mention made there of any medicaments used do you remember, or did your study really enter after the death of the person?

A. The study bore mainly on the condition of the heart as found at the autopsy examinations.

Q. Now, Doctor, with reference to item No. 16, you have a paper written in the Annals of the Rheumatic Diseases, Volume 11, published December, 1941, entitled "Gout and male pseudohermaphrodism."

Do you remember that?

A. Yes.

Q. That dealt with only one case, is that not right?

A. Yes.

Q. Doctor, in reference to your item No. 17 on your bibliographical list, I see a paper there written in collaboration with P. S. Hench, entitled "Palindromic Rheumatism".

353 Do you remember that?

A. Yes.

Q. Will you tell us briefly what that was?

A. That was a paper in which we attempted to describe a peculiar type of arthritis, a peculiar condition, peculiar group of symptoms which occur occasionally among patients who are complaining of arthritis and rheumatism.

Q. When you say "peculiar", do you mean rare?

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A. Rather rare, yes, unusual.

Q. How many cases were written up in that instance, do you remember?

A. I believe the first paper referred to 16, although I am not sure of that. I have to refresh my memory on that.

Q. Do you remember how long a period of time that embraced?

A. The collection of the 16?

Q. That is right.

A. I do not remember exactly, but it was a good many years. I think we estimated that we were seeing about three or four new ones each year, so that the collection of that number certainly required a number of years.

Q. And the conditions treated there, as you said, are rare, are they not, Doctor?

A. Oh, yes. That is a rather rare disease.

Q. Doctor, in reference to item No. 18 of your bibliographical sheet, you collaborated with M. B. Doherty
354 and H. W. Meyerding on a paper called "Coccidiodal Arthritis", published in 1942. Who is Mr. Doherty?

A. He is a pathologist employed by the Mayo Clinic.

Q. And what were his functions in this paper, Doctor?

A. He reported the condition of the tissues which had been found in this patient; also reported his finding of this organism; described it; described the method of its isolation and so forth.

Q. And what did Meyerding do?

A. Meyerding was a surgeon, now retired, who operated on this patient, opened the joints, removed some of the tissues.

Q. Was that a paper regarding one case, Doctor?

A. Sir, our case, yes. We reported a case and reviewed the literature dealing with the subject.

Q. And would you say that that form of arthritis is rare, Doctor?

A. Yes, quite rare in this vicinity, especially.

Q. When you say "In this vicinity", what do you mean, Doctor, just so that we know?

A. It is not so rare in certain parts of California, in the southwest, in the desert areas.

It is more common there. It is rather rare here; we do see it, but it is quite rare.

When we see such an instance, of course, we wish to

call attention to it, to the occurrence, so that they,
355 too, will be on the lookout for it.

Q. And that report was on one case?

A. Yes, I said we reported one case and reviewed the literature.

Q. Doctor, in reference to No. 19 on your bibliographical sheet, reference is made to your paper entitled "The present status of gold therapy for rheumatoid arthritis."

Do you remember that?

A. Yes.

Q. What did that deal with, briefly, Doctor?

A. That was a summary of my opinion of gold therapy, based on several years of use of it, and also, it involved a review of the opinions of others who had used gold therapy.

Q. Do you use gold therapy at the present time, Doctor?

A. Yes, indeed I do.

Q. Doctor, will you tell us, in reference to item No. 20, in which you collaborated with A. H. Baggenstoss on a paper, the title of which was "Visceral lesions associated with chronic infections (Rheumatoid) arthritis"—

A. No, infectious arthritis.

Q. Yes, that is right, rheumatoid arthritis.

Do you remember that paper, Doctor?

A. Yes.

Q. Will you tell us what that had to do with?

A. That was a survey of the condition of other
356 organs, other than the heart, as found at the autopsy of patients who had died of rheumatoid arthritis.

Q. And in this paper, you also dealt with those who had already died—I mean, those were your subjects?

A. Yes, these were all dead patients.

Q. Doctor, will you tell us what your paper entitled "Unusual cardiac lesions associated with chronic multiple rheumatoid arthritis", in which you collaborated with A. H. Baggenstoss—that is item No. 21—dealt with, briefly?

A. That had to do with a curious unusual lesion, a pathologic change which we discovered when we were making a survey of the condition of the hearts in this series of patients to which I referred a moment ago.

Q. And was that also made upon dead patients?

A. Yes.

Q. Dead subjects, rather?

A. Oh, yes, those were dead.

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Q. Doctor, in reference to item No. 22 of your bibliographical sketch, in which you collaborated with P. S. Hench, entitled "Palindromic rheumatism", will you tell us very briefly what that dealt with

A. We have already discussed one of them—I believe there were two papers which Dr. Hench and I published on that subject.

This was a similar paper published in another jour-
357 nal. I believe, at the time the second one was published.

It involves a somewhat larger number of patients—oh, perhaps four or five new cases had been added.

Q. That, also, is a rare condition, is it not, Doctor?

A. Yes, rather rare. We mentioned that.

Q. Doctor, your item No. 23 is one in which you collaborated with C. G. Morlock, entitled "The coexistence of tophaceous gout and non tropical sprue", appearing in the Annals of Internal Medicine, Volume 20, No. 6, June, 1944.

Do you remember that?

A. Yes.

Q. What did that, briefly, pertain to?

A. I think the title describes it. We had a rare instance of a combination of two strange diseases in the same individual. We reported that case in that paper.

Q. That was a report of one rare case?

A. Yes, exactly.

Q. And calling your attention, Doctor, to item No. 24 of your bibliographical sheet in which you again did some work with A. H. Baggenstoss and P. S. Hench, entitled, "The causes of death in thirty cases of rheumatoid arthritis", published in 1944.

Do you remember that?

A. Yes.

Q. Will you tell us briefly what that dealt with?

358 A. Yes, we were interested in the terminal manifestations of rheumatoidal arthritis and what happens to a patient with this disease and how he dies.

This paper was a summary of the result of our study of that particular phase of the life course of the patient with rheumatoid arthritis.

Q. How many cases?

A. I believe the title mentioned 30.

Q. Yes, that is right.

Doctor, in reference to item No. 25, in which you collaborated with P. S. Hench on a paper entitled "Recent advances in the treatment of rheumatic fever"—do you remember that?

A. Very well.

Q. "With special reference to sulfonamide prophylaxis and intravenous salicylate therapy."

What part did Dr. Hench play in that, Doctor?

A. Dr. Hench always played a very important part and role in the preparation of any papers in which we collaborated. He master-minded it, outlined it, often taught me how to go about it and laid the groundwork for the paper. He usually did the most of the work.

Q. Did he do the most of the work in any of the papers that he collaborated with you, Doctor?

A. In any of the papers I had anything to do with connected with Dr. Hench, he did the most of the work 359 and he certainly supplied the most of the brains.

Q. You are very modest, Doctor.

In reference to item No. 26—excuse me, I want to go back.

In that item No. 25, I see that the title mentions "Salicylate therapy intravenously". Could you tell us if you remember what salicylates were used?

A. Sodium salicylate.

Q. In reference to No. 26, Doctor, I see you have a paper here entitled "The Diamidines in chemotherapy: A survey of recent developments with a note regarding therapeutic trials in patients with rheumatoid arthritis", published in 1946.

Could you tell us, Doctor, if you remember what that dealt with so we can get an idea?

A. Yes, the English had developed these interesting compounds—I thoughat they were interesting—for the treatment of certain types of tropical infections and they appeared to be very good.

Some of the English applied them, also, in the treatment of arterial infections. I had read these reports and they interested me, and at that time, we were casting around and searching for new leads for new research paths to follow in seeking a better treatment of rheumatoid arthritis, and it seemed to me that that was one which should be studied.

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I arranged for the importation of a quantity of those
360 compounds, studied carefully the literature that had already accumulated on the subject, applied them experimentally in connection with rheumatoid arthritis, noted no particular improvement, but felt that that research was worthy of publication and the paper that you mentioned is a report of that work.

Q. With reference to item No. 27, Doctor, which you collaborated with Dr. Hench, W. Bauer, E. W. Boland, and others, entitled "Rheumatism and arthritis: review of American and English literature of recent years", do you remember that paper, Doctor?

A. Yes.

Q. What part did Dr. Hench have in that paper, may I ask?

A. Dr. Hench was the chief editor, for one thing. He reviewed clinically the sections which each of the other authors had prepared; also, he prepared several very important larger sections of the review.

Q. Would you tell us what part P. S. Bauer had in it, if you remember?

A. That is Walter Bauer—W.

Q. Oh, it says W. Boland.

A. Boland is not W. It is Edward.

Q. Oh, it says W. I will change that.

A. Dr. Bauer was one of the co-authors of it. He prepared a considerable section of it. At the moment, I
361 do not remember which section he contributed.

Q. Will you tell us whether or not that dealt with any therapeutic measures to be used in rheumatism or arthritis?

A. Yes, it did, indeed.

Q. Did it mention salicylates, do you remember?

A. Well, I am sure it did, although I do not remember a specific instance for you.

Q. Doctor, as a matter of fact, practically all texts, standard texts that are used mention the use of salicylates for the relief of pain of rheumatism or arthritis, is that not right, Doctor?

A. Texts on rheumatism or rheumatic fever?

Q. Yes.

A. Yes, I would say so.

Q. And general medicine, also?

A. Yes.

Q. Doctor, in reference to item No. 29 of your bibliographical sheet in which you collaborated with W. Q. Wolfson, H. S. Gutterman, R. Levine, C. Cohn, H. D. Hunt, entitled "An endocrine finding apparently characteristic of gout", do you know how many cases you studied in that paper, Doctor?

A. I believe there were 16.

Q. And will you tell us, is that a common sort of a case of gout, the one that you studied?

A. Yes, the usual run-of-the-mill case of gout.

362 It was used in that investigation as they came along.

Q. Did your paper discuss the alleviation of pain, do you remember, Doctor?

A. No, sir, it had nothing to do with that.

Q. Oh, it had nothing to do with the alleviation of pain?

A. No, sir.

Q. Doctor, I notice that item No. 30, on the same sheet, in which you and Wolfson, Hunt, Levine, Gutterman, Cohn, Huddlestun and Kadota, collaborated on a paper entitled "The transport and excretion of uric acid in man".

Do you remember that paper?

A. Yes, sir.

Q. Will you tell us briefly what that was about?

A. Yes, it had to do with the mechanism by which the body absorbs, transports and excretes uric acid.

Q. Was therapeusis discussed in that paper?

A. No.

Q. I see by your item No. 31 that you are a contributor to Comroe's book on arthritis, is that right?

A. Yes, to the last edition.

Q. Doctor, in reference to item No. 32, entitled "The Visceral lesions of Rheumatoid Arthritis", that also appeared in Comroe's Arthritis, did it not?

A. Yes.

Q. What did that deal with, briefly?

363 A. Well, that consisted of a summary of our findings as reported in the earlier paper which you mentioned, plus any reference to various other publications which dealt with the subject, a compilation of it in a readable form for students and other physicians for their information.

Q. Did that have anything to do with the use of any drugs for the alleviation of pain, Doctor?

A. No, sir.

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Q. It did not?

A. No, sir.

Q. Doctor, in reference to item No. 33, entitled "The Ameliorating Effect of Jaundice on Certain Rheumatic Diseases", that also was published in Comroe's Arthritis, was it not?

A. Yes.

Q. Did you discuss the use of any medicament in that article, Doctor?

A. Yes, I believe there was included reference to attempts to reproduce that phenomenon by various medicines.

Q. Will you explain that a little more in detail? I did not understand that, Doctor.

A. People interested in the subject of arthritis have had their attention drawn to that phenomenon in the amelioration of arthritis during the jaundice stage, during the various experiments that have been conducted in various medical centers, attempting to reproduce artifi-
364 cially that phenomenon and that is a summary of what had been done.

Q. In other words, you were treating the rheumatic diseases accompanying jaundice, I mean as a cause of it—let me put it this way.

What was the relationship of the jaundice to the rheumatic conditions, Doctor, that you talked about?

A. The observation that was responsible for that chapter was one made first by Dr. Hench, that certain types of rheumatism or rheumatic diseases are ameliorated or lessened or improved during the jaundice stage.

This was a summary of what had been said and done by investigators up to that time, prepared for the purposes of being printed in this book.

Q. With reference to item No. 34, entitled "The Ameliorating Effect of Pregnancy on Certain Rheumatic Diseases"; that, also, appeared in Comroe?

A. Yes.

Q. I presume that is similar to the one previous?

A. Exactly.

Q. Doctor, will you tell us, in reference to your paper which is item No. 35, entitled "Gout, clinical pathological and roentgenographic observations", what did that have to do with, Doctor, in plain language?

A. It was a descriptive paper outlining the clinical

course of gout, symptoms, changes which are pro-
365 duced in X-ray pictures of joints of patients who have that disease.

I believe there were references, also, in the paper to current methods of treatment.

Q. In reference to your paper, Doctor, entitled "Cardiac lesions in Rheumatoid Arthritis", in which you collaborated with Bishop, Weintraub and Dr. Hench, was that on dead subjects?

A. No, that was on living subjects.

Q. On how many, Doctor?

A. I believe there were 150.

Q. And will you tell us very briefly what that paper had to do with?

A. We had found a good deal of damage in the hearts of people who died with rheumatoid arthritis and we determined to investigate carefully the condition of hearts of people who were living with that disease, and in that paper, we summarized the results of the study along those lines.

Q. Doctor, your paper entitled "Rheumatoid Arthritis, with Especial Reference to its Treatment", do you remember that—Veterans Administration Technical Bulletin?

A. Yes.

Q. What, briefly, was that about, Doctor?

A. Well, the Veterans Administration, I believe, publishes bulletins for the information of their physicians, dealing with new developments, summarizing current
366 opinions in various fields and this was a technical bulletin that I prepared for them which summarized briefly the current attitudes, current ideas as to the most advantageous way of undertaking the treatment of rheumatoid arthritis.

Q. Your items 40 and 41 with reference to ACTH and Cortisones have not been published as yet, is that right?

A. Yes, I believe the most of those are still in press.

Mr. Gettleman: If the Examiner please, may we have a recess for about five minutes?

Trial Examiner Lipscomb: Yes, the recess is granted.

(A short recess was taken.)

Trial Examiner Lipscomb: On the record.

By Mr. Gettleman:

Q. Doctor, you remember testifying regarding Exhibit 1?

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A. Yes, sir.

Q. In which you said that, in your opinion, sufferers from rheumatism and arthritis and other allied conditions understood that to mean a cure of rheumatism and arthritis. Do you remember that?

A. Yes, sir.

Q. Now, when your patient—did I understand you to say that your patients discussed that with you?

Mr. Callaway: You mean this particular exhibit?

Mr. Gettleman: Well, I am asking him if I understand that his patients discussed that with him.

367 The Witness: No, sir, I did not say that.

By Mr. Gettleman:

Q. Then, I did not understand you to say that. Will you tell us, Doctor, if that was your judgment by reading this exhibit that people might tell you that? Will you please express yourself clearly? I did not get the answer to that.

A. I believe my patients would consider that the statements in that advertisement indicate that the remedy is put forth as a cure.

Q. Doctor, will you tell us this. Did you ever discuss radio continuities or commercials with your patients?

A. Yes.

Q. Did you ever discuss this radio commercial with your patients?

A. I cannot say that I did.

Q. As a matter of fact, the first time you saw this radio commercial was as it is as an exhibit?

A. Exactly.

Q. Then, you could not have discussed it with any of your patients?

A. It is unlikely.

Q. In other words, Doctor, when you tell us that in your opinion your patients would believe that this meant a cure, that is your opinion, based upon your own judgment,

368 is that not right, Doctor?

A. It is my opinion that my patients would consider that as advertising a remedy supposed to be a cure.

Q. And you also stated on direct examination that it was your opinion that your patients would believe that by virtue of this exhibit No. 1, the underlying causes of rheumatism or arthritis would be cured, is that not right, Doctor?

A. They would consider the underlying causes to be removed.

Q. Had they heard this commercial—that is what you mean?

A. That is right.

Q. But you do not know, of your own knowledge, whether any patients of yours ever did hear this commercial?

A. No.

Q. Doctor, as a matter of fact, this exhibit says this: "The brand new safe and reliable way to curb pain that is being prescribed by many doctors to bring quick, pleasant relief from arthritic pain".

Could you tell us, Doctor—

Mr. Callaway: Now, quote the rest of it to him.

Mr. Gettleman: "—stiffness and swelling".

Mr. Callaway: All right.

By Mr. Gettleman:

Q. Could you tell us, Doctor, why you assume that your patients would believe, had they read this or heard it, that it would mean it would affect the underlying causes of
369 rheumatism and arthritis?

Mr. Callaway: I suggest that the doctor be allowed to have that in front of him when he is asked that question.

Mr. Gettleman: I would be glad to give it to him.

The Witness: Sir, it has been my observation that they would believe it to be an advertisement of a remedy supposed to affect a cure or to remove the underlying causes.

By Mr. Gettleman:

Q. Well, Doctor, will you tell us upon what basis—is that your own observation, that is what I mean?

A. Yes, it has been my observation that they would consider this advertising—

Q. But you never—

A. (Continuing)—in that line.

Q. But you never discussed this particular radio commercial with any of your patients, did you?

A. Not this particular one, not that I know of.

Q. Doctor, in that radio commercial, is there anything said there about a cure that you can find?

A. May I say this—I do not know whether you wish it on the record.

POOR COPY

There is a word "cure" in this statement—"brand new safe and reliable way to 'cure' pain—"

Mr. Gettleman: That is "curb", Doctor, not "cure"—c-u-r-b.

370 The Witness: But aside from that, I would say that the patients' reaction to this would be that "Now, here is an advertisement of a substance which is claimed to be a cure for arthritis."

By Mr. Gettleman:

Q. Why, Doctor?

A. It has been my observation that they would derive that or come to that conclusion from hearing or seeing this.

Q. Would your observations be the same in reference to hearing any radio commercial regarding any proprietary, Doctor?

A. I do not follow you—I am sorry, sir.

Q. Well, suppose this was a different product. Would your answer still be the same?

What I am trying to get at, Doctor, if I may, is this. Why do you suppose that they would think it would change the underlying causes or structures?

Mr. Callaway: May we go off the record just a moment?

Trial Examiner Lipscomb: Yes, off the record.

(Discussion off the record.)

Trial Examiner Lipscomb: On the record.

It is agreed between counsel that we shall reconvene this hearing here in Chicago during the week of January 22, or January 29, 1951, or to some other appropriate date to permit counsel for the respondents to complete their

371 cross-examination.

The hearing is now adjourned, to reconvene tomorrow morning at 10 o'clock.

(Whereupon, at 4:30 p. m., November 20, 1950, the hearing in the above entitled matter was adjourned to 10:00 o'clock a. m., Tuesday, November 21, 1950.)

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Room 802-A, U. S. Post Office,
433 West Van Buren Street,
Chicago, Illinois,
November 21, 1950.

Met, pursuant to adjournment, at 10:00 a. m.

Before:

Abner E. Lipscomb, Trial Examiner.

Appearances:

Joseph Callaway, Attorney for the Federal Trade Commission.

Frank E. Gettleman, Attorney for Respondent, Jerome H. Rose (10 South La Salle Street, Chicago, Illinois),

James B. Goding, Attorney for Respondent, J. Sanford Rose (653 Washington Building, Washington, D. C.).

Edward Brodkey, Attorney for Respondent, Rhodes Pharmacal Company, Inc. (10 South La Salle Street, Chicago, Illinois).

373 Proceedings.

Trial Examiner Lipscomb: The hearing will come to order.

Mr. Callaway, I believe you have a new witness.

Mr. Callaway: I want to call Dr. Barton.

EVAN M. BARTON was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

Direct Examination by Mr. Callaway.

Q. You are Dr. Evan M. Barton?
A. Yes, I am.
Q. Where do you live, Doctor?
A. I live at 5817 Blackstone Avenue, Chicago, Illinois.
Q. Are you a practicing physician, Doctor?
A. Yes, I practice medicine.

POOR COPY

Q. And do you have an office here in Chicago?

A. I have an office at 122 South Michigan Avenue, Chicago.

Q. Doctor, you are being offered here today as an expert witness, and the weight to be given the testimony of an expert depends in some degree on his qualifications as an expert, so I wish you would please outline for us your qualifications as an expert. Let's start out first with the degrees you have received, both scientific and aca-
374 demic, and the dates and the institutions from which they were received.

A. I received a Bachelor of Arts degree from Williams College, Williamstown, Massachusetts, in 1924, and Doctor of Medicine degree from Johns Hopkins University in 1929. Following that I had an internship at the Presbyterian Hospital in Chicago, under the supervision of Dr. Ernest E. Irons; that lasted until 1930.

I then went abroad for a period of study in Pathology, and returned to this country, and kept on studying Pathology for another three years as Fellow in Pathology at Rush Medical College, which then was a part of the University of Chicago.

Q. Let's see, you studied Pathology at the University of Hamburg, Germany?

A. At the University of Hamburg, Germany, under Professor Fahr.

Q. And then you were also for a while at the Medical Research Laboratory at the Royal Infirmary in Aberdeen, Scotland?

A. Yes, I did that in 1934 after my three years with Dr. Le Count here in Chicago in Pathology.

Q. Now, since your interneship, and since those studies which you have made, have you had any medical college appointments?

A. With the Fellowship in Pathology, of course, there went along with it a position as instructor in the
375 medical school, which at that time was Rush Medical College. Since then I have always engaged in teaching, in the University of Illinois College of Medicine, and my position now there is Clinical Assistant Professor of Medicine.

Q. At the University of Illinois College of Medicine?

A. The University of Illinois College of Medicine.

Q. And how long have you been on the faculty of the University of Illinois College of Medicine?

A. I have been on that faculty since 1942, which I believe was the time when the transfer occurred between the University of Chicago and the University of Illinois, as far as Rush Medical College is concerned.

Q. Now, Doctor, what hospital staffs are you on, or have you been on?

A. I was assistant pathologist at the Presbyterian Hospital at the time of my work from 1931 to 1934. In Aberdeen, Scotland, I was a Voluntary Assistant in the Medical Research Laboratory of the Royal Infirmary for about seven months, and we were working then on certain problems in nutrition as related to rheumatic diseases.

Then, in 1935 and '6 I became a member of the staff of the Presbyterian Hospital in Chicago, and I am still a member of that staff.

I am also attending physician at the Veterans Hospital at Hines, Illinois, and have been since 1946.

376 I was Chief Consultant to the Medical Service at Provident Hospital here in Chicago for a short while while they were undergoing some reorganizations.

I think that is about all the hospital appointments.

Q. Now, what about clinics?

A. In 1939 to '41 I was physician in charge of the Arthritis Clinic of Central Free Dispensary, which was part of Rush Medical College at the time.

Q. Does your work at the Veterans Hospital have to do with arthritis?

A. Yes, almost exclusively. That is a ward which is made up especially of arthritic patients.

Q. Do you see a great many arthritic patients out there at that hospital?

A. Yes. The admissions out there over the past three or four years on that ward have totaled, I suppose, somewhere in the neighborhood of 2,500, more or less. I am not sure of the exact number.

Q. That is just an approximate figure?

A. Yes.

Q. Now, Doctor, have you participated in any seminars and symposiums on arthritis? I hand you here a list that might refresh your memory, I believe.

Mr. Gettleman: Just a moment, Doctor. I will object to that, if the Trial Examiner please. I think the 377 Doctor is telling what symposiums or seminars he has attended without having written evidence before him.

POOR COPY

Trial Examiner Lipscomb: Objection sustained.

Mr. Callaway: Doctor, would it be helpful to you to have that paper in front of you in talking about the seminars.

The Witness: I would just as soon I have the one I have in my own pocket.

Mr. Gettleman: I will object to that question, if the Examiner please, unless it is shown that the Doctor has exhausted his memory.

Trial Examiner Lipscomb: Objection is sustained, and if the Doctor needs to refresh his memory and states that he needs to refresh his memory, then he may be given the paper.

By Mr. Callaway:

Q. Doctor, give from memory, if you can, what has been your participation in seminars and symposiums on arthritis and rheumatism. And, if you reach the point where you need something to refresh your memory on that, please state so.

A. In the course of teaching there have been a good number of times when I have been asked to talk especially about arthritis and rheumatism, special interests of mine since 1933 or possibly '34. And without going too far back into history, perhaps I might begin in 1946 after re-
378 turning from Army Service, when the University of Illinois was organizing courses for physicians in order to give them brush-up and various things that they might have missed while in the Army. I was asked by the University then to take part in such course, and gave part of the rheumatic disease program then. That amounted to several lectures and conferences.

Since then there have been at least a dozen what you might call speeches or addresses, seminars of various kinds. And I would like very much if I could be permitted to refer to my notes as to the dates of them.

Mr. Gettleman: No objection to that.

Trial Examiner Lipscomb: Do you wish to see this?

Mr. Callaway: He has a copy.

The Witness: I have a copy here.

Trial Examiner Lipscomb: Do you wish to see it, counsel?

Mr. Gettleman: No.

The Witness: On January 3, 1947, I talked to the medi-

cal staff at Hines Hospital on the "Prognosis and Management of Rheumatoid Arthritis."

In April of 1947 there was a meeting here at the American College of Physicians, of which I am a Fellow, and I was asked to take one of the clinics at that meeting and to speak on the subject, "The Organized Treatment of Rheumatoid Arthritis."

379 In October of 1947 I spoke to the medical staff of the Provident Hospital on the subject, "Differential Diagnosis of the Acute Arthritic Episode."

The American Rheumatism Society met in Chicago in June of 1948, and I spoke there, giving a case report entitled, "Dermatomyositis and Universal Calcinosis." An associate in the preparation of the report was Dr. Arnold Black.

I gave a lecture on "Osteoarthritis" at the Interim Session of the American Medical Association at St. Louis, Missouri, November, 1948.

Again at Hines Hospital, February 18, 1949, I spoke to the staff on "Unusual Clinical Problems in Arthritis."

Since 1936 or possibly '7, I have been engaged in some experimental work, particularly having to do with cartilage and joint tissues and bones, and that involved studies of growth of bones and their response to certain types of injury. And that subject was presented as a preliminary report in the Seminar at the Department of Pathology, University of Illinois College of Medicine, in March, 1949, under the title, "Experimental Inhibition of the Epiphysis."

On March 30, 1949, along with Dr. Simon Zivin, I presented before the Chicago Rheumatism Society, a case report on "Gout in a Filipino. A Case with Rheumatoid and Spondylitic Features."

In December, 1949, I was asked to go to Indianapolis
380 to the Veterans Administration Hospital there to give a lecture on "Clinical Problems in Arthritis."

At the meeting of the Chicago Rheumatism Society, October 25, 1950, I gave a paper entitled, "Cortisone in Chronic Crippling Disease."

And most recently, November 13, 1950, I went to Milwaukee, and at a meeting of the Wisconsin Chapter of the Arthritis and Rheumatism Foundation, I talked on "Rehabilitation in Chronic Arthritis."

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By Mr. Callaway:

Q. Now, Doctor, you have mentioned the American Board of Internal Medicine. Are you a member of that Board, or diplomate of that Board?

A. Yes, I was certified as a specialist in Internal Medicine in 1942.

Q. What other medical and scientific societies do you belong to?

A. I have been a member of the Chicago Pathological Society since 1932. I am a Fellow of the American Medical Association. I have been a Fellow of the American College of Physicians since 1946. I am a member of the Chicago Society of Internal Medicine. I am a member of the American Rheumatism Association, and the Chicago Rheumatism Society.

Q. Now, Doctor, were you in service during the second World War?

381 A. Yes. I entered in June of 1942 and served until April, 1946.

Q. Did your work there have anything particular to do with rheumatism or arthritis?

A. No, it didn't. People knowing my interest, however, did ask me to see cases of it from time to time.

Q. While you were in the service?

A. While I was in the service.

Q. Doctor, you stated that you are a Fellow, I believe, of the American College of Physicians. Just what does that mean, what is that?

A. The American College of Physicians is a group of practitioners and doctors interested particularly in internal medicine, who have been organized together and joined together to uphold the highest standards of medical practice and ethics.

Q. And are there certain requirements for Fellowship in that organization?

A. Certain requirements as to education and previous experience, and attainments.

Q. Doctor, have you had published any scientific articles?

A. A few of the things that I have been interested in I have had published, yes.

Q. Now, some of those lectures that you mentioned have been published, I believe, have they not?

A. One or two of them may become published. One

382 of them is in press now. I published an article, I think it was—. May I refresh my memory on that as to what the date was?

Q. Yes.

A. An article published by the Illinois Medical Journal, October, 1943, with Dr. Traut, entitled "Gold Therapy of Arthritis."

Q. Do you also have an article in press now?

A. Yes, there is an article in the press concerning the treatment of Chronic Crippling Disease with Cortisone. That refers to rheumatoid arthritis. There have been other articles published over the years dating from 1932, when I was interested particularly in cardiovascular diseases, and later on certain case reports and the study on pneumonia, from the work at the County Hospital.

Q. Now, Doctor, do I understand from what you have said that a portion of your medical life has been spent in the study and treatment of rheumatic and arthritic conditions?

A. It has been a real interest of mine since early in 1930's, and I have kept that interest up actively in practice as well as in experimental work.

Q. Doctor, how do arthritic and rheumatic conditions rank among the major causes of illness in this country?

A. Arthritis and rheumatism as a whole are perhaps the largest cause of chronic illness in the temperate zone.

Q. Now, Doctor, in your private practice and in 383 hospitals with which you are associated, and at various clinics, have you seen and treated any patients with osteoarthritis?

A. Yes.

Q. Rheumatoid arthritis?

A. Yes.

Q. Infectious arthritis?

A. Yes, some of those.

Q. Gout?

A. Gout, yes, indeed.

Q. And other rheumatic diseases, including fibrositis, bursitis, neuralgia, neuritis, and sciatica?

A. All those that you have mentioned.

Q. Doctor, have you in your private practice, and in your hospital connections, and in the clinics that you have attended, followed the course of these various diseases and disorders, including their complications?

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A. Yes.

Q. Doctor, have you had occasion to conduct studies and research both in animals and with human patients in the field of rheumatic and arthritic conditions?

Mr. Gettleman: If the Trial Examiner pleases, I suggest that the witness should be asked the questions, and not be given these questions that are extremely leading. He can tell what he has done without Mr. Callaway testifying as he is.

384 Trial Examiner Lipscomb: The Trial Examiner will suggest to Mr. Callaway to endeavor to state his questions without leading.

Mr. Callaway: I am not endeavoring to lead the witness.

Trial Examiner Lipscomb: I don't think that you are, but any question which contains a statement of fact tends to lead, and it is suggestive and helpful and serves as a leading question, or can serve as a leading question. Of course, any question in the world can serve as a leading question, as far as that is concerned, and I don't want to be intolerant, and I am sure the respondent doesn't want to be intolerant.

By Mr. Callaway:

Q. Doctor, you have said that you have conducted research studies in the field of arthritic and rheumatic conditions, and I believe that some of these studies have been concerned with animals, have they not?

A. Yes. I mentioned previously that in Aberdeen at the Rowett Institute, which was interested particularly then in nutritional problems, I was part of a group working with nutrition in rats, in particular relation to rheumatic diseases. It was a fairly large project, which was sparked by Professor Stanley Davidson, who is now Regis Professor of Medicine in Edinburgh, and a man well 385 known in circles where rheumatism is of interest.

Q. What connection would work with rats have to do with rheumatism in the human being, or arthritis in the human being?

A. Well, this particular survey was aimed at showing the susceptibility of animal and male tissues to poor nutrition, as opposed to those with good nutrition; and I left Aberdeen and the group before it was completed. This was, you see, over 15 years ago, and the details of what eventually came out of it I have forgotten, but it is cer-

tainly a part of the general subject of rheumatism to consider the influence of nutrition in general on arthritic problems.

Q. Can deductions as to what would help a human being be drawn from experiments such as that?

A. In a limited way.

Q. Now, Doctor, what other research work have you done that you could tell us about, either with humans or with animals, in the field of arthritis and rheumatism?

A. When working in the Central Free Dispensary there were a few projects in connection with the overall treatment of arthritis, which we were studying, the influence of certain drugs, and the influence of certain physical therapy procedures, I had some part in observing that; and the result of that was published in the article by Dr. Traut that has already been mentioned in connection with Gold Treatment.

386 In addition to that, I mentioned the work on animals which is currently in progress, which has to do with observations on the effect of certain injurious agents to cartilage and bone, and that is still in progress, and conclusions have not yet appeared clear enough to publish.

Q. Have you had any studies or research with Cortisone or ACTH?

A. Yes. Since about June of this year, along with others at the Presbyterian Hospital in Chicago, I have taken part in the study of the effect of Cortisone on people with chronic crippling rheumatoid arthritis, the very sick ones—previous reports having been concerned more with those that had more reversible changes. This study is still going on.

Q. Doctor, is there a disease known simply as rheumatism or arthritis?

A. No, not a disease. Neither term is the name of a disease.

Q. Are there different kinds of arthritis, Doctor?

A. There are many different kinds of arthritis.

Q. Could you tell us some of, you might say, classifications?

A. Yes. The classifications are quite variable from country to country all over the world, but in recent years they have become more standardized due partly to the efforts of the American Rheumatism Association and comparable British societies.

I think we can recognize now a group which could be
387 called acute infectious arthritis, or even chronic infectious arthritis.

Q. Would that be where the cause of the arthritis would be known?

A. That would be where the cause of the arthritis would be a known germ or a demonstrable organism of some kind, such as streptococcus, rheumicoccus, tuberculosis, one of the Bricella group, for example, and so on. And then there are a large group of people with chronic arthritis, and there are two great sub-divisions, perhaps, of that, one which is known as rheumatoid arthritis, which can be a very serious trouble and a crippling one, and is the one that lots of people have in their minds when they think of the word "arthritis"; and the other group is known as osteoarthritis, a synonym of degenerative arthritis, which is very wide-spread and is often less severe than rheumatoid arthritis. In addition to that, there is the type of metabolic change which expresses itself in joints as gout. And then there is acute rheumatic fever, which is so often a disease of childhood, although it has been known to occur for the first time in adult life as well.

Q. Doctor, do many of these classifications have subdivisions?

A. I should say that in addition to those that I have mentioned specifically there are many miscellaneous types
of joint diseases, some of them variants of the ones I
388 have mentioned, and others that are quite apart; but in general there are perhaps 800 or even more different kinds of rheumatism.

Q. Now, Doctor, will you discuss for us some of the different forms of fibrositis, bursitis, neuralgia, neuritis, and sciatica? What I mean by that, are they classified as rheumatism, you might say, as distinguished from arthritis, these last that I have mentioned?

A. I think perhaps in people's minds the group that you mentioned is thought of more as muscular rheumatism as opposed to articular rheumatism, although the matter of neuritis might have to be considered separately. At any rate, as I get the question, you would like me to talk a little bit about the symptoms of these things?

Q. Yes, I would like for you to discuss them in your own way, as to the distinguishing features, you might say, between these different groups, say, fibrositis, bursitis, neuralgia, neuritis, and sciatica.

A. Fibrositis is a rather vague condition, because it is hard to demonstrate an anatomical and pathological changes in it—that is, changes in the tissues themselves produced by the disease. That is possibly because the symptoms are produced by functional changes that can be reversible.

At any rate, it is characterized by sore muscles and by sore places and muscles that people with sensitive fingers have claimed to be able to feel. And it involves
389 also attachments of muscles and ligaments to bone, and inflammation in those locations.

Bursitis indicates something going wrong in a bursa—actually inflammation there, but it may be a chemical matter such as a deposit of calcium, or it may be irritation from degenerations associated with excessive use or old age. And often those changes are visible on X-ray, so that there are actual structural damages which can be visualized and which can pin diagnosis down, aside from the pain and the other symptoms.

Sciatica is a symptom, of course, it isn't a diagnosis. It is a symptom of pain in the region of the sciatic nerve, which is a long nerve that comes down the back of the hip, thigh and leg, and it can be caused from a variety of things, including pressure from the loose or extruded intervertebral disc. It can be caused from pressure due to spinal cord tumor. It can be caused from referred pain due to inflammation in joints of the spine where the sciatic nerve emerges. It can be caused by actual inflammation about the sheath of the nerve itself and pressure on the nerve itself. And it can be very painful and very disabling.

Q. Doctor, what is neuralgia?

A. Neuralgia is a symptom of pain along the course of the nerve. It has the distribution of the nerve, and the pain is often severe and has a characteristic throbbing nature to it.

390 Q. Could you tell us something about neuritis. What is neuritis?

A. Neuritis is often thought of both by doctors and laymen as a synonym for neuralgia. I suppose if one used the term absolutely correctly one would restrict it to instances in which there was actual inflammation demonstrable along the course of the nerve or in a nerve. But it is not so used in general, and often it means chiefly the symptom of pain, in a similar way to neuralgia.

Q. Now, Doctor, are these various kinds of arthritis and rheumatism that you have mentioned characterized by the same pathological changes or not?

A. They are quite different. Each one has its own pathology, its own changes, both as to final result and in development of the condition.

Q. In the way you have used it, what do you mean by "pathology" or "pathological change," for instance?

A. I mean the change in the structure of the tissues involved, changes which are due to the disease. They can be demonstrated by direct observation, either by looking at them grossly or under the microscope.

Q. Doctor, are the various kinds of rheumatism and arthritis characterized by the same progress and the same developments?

A. Various kinds have quite different progress. For example, at the onset, the beginning of them, they are
391 often quite different. Some of them start slowly and gradually. Others start suddenly. Some of them progress, notably rheumatoid arthritis, even from patient to patient in a very variable manner, but rheumatoid arthritis, for example, tends to be progressive and tends to involve the joints in fibrous union so that they are unable to move back and forth and to cripple the person; whereas the disease osteoarthritis is much less progressive, much less deforming in general, and is entirely different in its progress.

Of course, such things as infectious arthritis progresses in a fulminating manner at times, and one can lose the use of a joint very quickly, in a matter of a week or two.

The progression of gout is another story entirely, and it has to do with the effects of the deranged uremic acid metabolism on other organs besides the joints. For example, a large proportion of people with gout have trouble with their kidneys because of deposition of urates in the kidney. A large proportion of them eventually end up with hypertension signs of uremia, and it is a situation that is entirely different. I think that is obvious from the situation where joints are particularly involved themselves.

Q. Now, you have been discussing for us, in addition to the progress and the development, some of the various kinds of manifestations, too, have you not?

A. Yes, of these various diseases. You have men-
392 tioned some of them.

Q. Are the various kinds—if you haven't answered this—of arthritis and rheumatism characterized by the same manifestations or by different manifestations?

A. I thought I made that clear, that each kind is characterized by quite different manifestations.

Q. That is what I thought, I just wanted to make certain. Now, Doctor, do the various kinds of arthritis and rheumatism respond to the same form of treatment?

A. No, the treatment has to be different for the various kinds, and greatly individualized for each patient.

Q. Doctor, what does the word "treatment" mean to you in relation to a disease or a condition such as any type of arthritis?

A. I suppose the word "treatment" is a possible word to use in some respects with a disease or a group of troubles like rheumatoid arthritis or osteoarthritis or gout. The term "management" might be a better term because it implies a manifold attack on the trouble. That is to say, experience with these patients indicates that they need help from the standpoint of relief of pain, for example. They also need help from the standpoint of mobilization of joints, which involves questions of physical therapy involves at times questions of surgery. Their general health may be severely affected. They may have associated anemia or other associated metabolic disturbances, so
393 that the attack has to be along very broad lines of general medical therapy, including rest, physical therapy, medicines, surgery, and at times, even psychiatry.

Q. Doctor, is there a single drug or combination of drugs which constitutes an adequate, effective or reliable treatment for all of the various kinds of arthritis, rheumatism, and related conditions?

A. No.

Mr. Gettleman: Just a moment. I will object to that question, if the Examiner please. It is too broad. It is calling for an answer that this witness can't possibly know. He can't possibly know every condition, every piece of work that is being done at the present time by even people known to him. He doesn't know, and he can't know. He is not in a position to know.

Trial Examiner Lipscomb: Mr. Reporter, will you read the question, please?

(The reporter read the question as follows:

"Question: Doctor, is there a single drug or combina-

tion of drugs which constitutes an adequate, effective or reliable treatment for all of the various kinds of arthritis, rheumatism, and related conditions?")

Mr. Callaway: I under the Doctor understood that I meant "In Your Opinion is there any such drug or combination."

Mr. Brodkey: If the Court please, I think we should
394 assign this further reason for the objection, that while we are conversant with the fact that this is a solicitation of the Doctor's opinion, the objection goes to the proper basis for that opinion, the position being that the Doctor is not qualified to express such an opinion. In other words, we realize that counsel is simply asking his opinion, but we don't think that he is qualified to express an opinion on this particular subject, for lack of foundation.

Trial Examiner Lipscomb: The Trial Examiner will be constrained to overrule the objection. You may answer the question.

Mr. Brodkey: Exception.

The Witness: The answer is no.

By Mr. Callaway:

Q. Doctor, when a patient comes to you and complains of rheumatism or arthritis, what must be determined before adequate and effective treatment can be given?

A. You have to determine first of all what is wrong with him—that is to say, whether he has arthritis—and then you have to determine what kind of arthritis it is, and what other diseases are associated with it, if any.

Q. What is your first step in diagnosis of such situations?

A. Usually one proceeds in a fairly customary manner, by taking a history.

Q. What would a history include, Doctor, among other things?

395 A. One would inquire into the patient's age, naturally, the sex, marital status, would want to know what his job was and is, would want to know how long he had had his trouble. And I think one of the first things we ask is what the chief complaint is, and how long it has lasted.

Then perhaps we go into the family history and see what the age and cause of death of the parents and rela-

tives were, because that might have some influence on diagnosis, particularly such questions as gout or certain forms of osteoarthritis which have familiar tendencies.

And then one goes into the personal history of the patient from childhood on, inquiring into diseases they have had before. Specifically, one asks about rheumatic fever in childhood, if the patient is an adult. One asks about sore throats and tonsillitis, streptococcus infections, particularly, scarlet fever—because it is known that sometimes those previous experiences that the patient has had influence the development of disease later on.

Operations are asked about. Then one perhaps can go to the history of the present illness and ask in detail about the chronology of the trouble that constitutes the chief complaint.

And then, if one is careful, one starts almost at the beginning again and goes through all the system—that is the respiratory system, cardiac system, neurolog-
396 ical system, digestive system, urinary system, reproductive system including the question of venereal disease,—and asks questions of the patient about symptoms which might occur or be produced in those systems.

Q. Why would you go into all of that in the history of the patient, Doctor?

A. Because if you don't you don't find out whether the patient has arthritis or not.

Trial Examiner Lipscomb: I think this will be a good point for a five-minute recess, gentlemen.

(A short recess was taken.)

Trial Examiner Lipscomb: The hearing will come to order.

By Mr. Callaway:

Q. Doctor, after taking the patient's history, what is the next step in the diagnosis?

A. Usually a physical examination.

Q. And what would that include, Doctor?

A. That includes an inspection of the patient from top to toe, usually with the patient's clothes off. One examines the skin for color, pallor, and the nodules, perhaps, some dialated veins or capillaries which might have significance, and especially sweating in connection with extremities and about joints. One examines the eyes, the ears. In gout, of course, there are little deposits of urate which are

397 chalky and are often found in the ears, and those are sometimes also found in the cartilage around the nose, as well as elsewhere in the body.

One examines the nose and throat for evidence of infection. The same is true of the teeth. The thyroid gland and the neck is examined. One feels in various places in the body for lymph nodes which are enlarged, sometimes generally in the presence of a general infection, or locally those have served a particular extremity, perhaps, if the extremity is the site of a local infection. They are also enlarged in certain types of blood diseases.

Then one examines the chest, lungs, heart. Of course, that is particularly important in rheumatism, because both in rheumatic fever, whether it is recent or of long standing, or even in rheumatoid arthritis, there are definite heart lesions that would be shown to be present in quite a fair majority of cases.

One examines the abdomen, feels for the liver, the spleen, or any other masses or tenderness that may be present. One examines the rectum. In the case of women one examines the genital organs. One does the same thing in the case of men.

One also examines the neurological system, that is to say, the motor power, sensory ability, and reflexes as they are administered by the nervous system.

398 One also goes to the extremities in particular and examines muscular system for atrophy, for inbalance one side with the other, for tenderness. One examines the joints to see if they are swollen, to see if they move through their normal range of motion.

In many cases one writes that down so as to judge the results of treatment later. Particularly when the back is the site of pain, one many examine with a tape measure to see such things as chest expansion, the size of the thighs, circumference, the size of the calves, and one records those measurements.

One does the same thing when joints are swollen. One feels the joints to see if they are tender, to see if they are warm. As I said, one moves them about and sees the range of motion, and in addition sees the matter of crepitation, which is the little noise that occurs when there may be a loose body or rough place in the joint due to disease.

I don't know that that completes what one would do in a physical examination in any individual case, but it is a fair sample.

Q. I see. Then after physical examination, Doctor, what would you do next in forming your diagnosis?

A. One goes ahead with certain laboratory examinations that have become routine—blood count is important, serological test for syphilis, those are almost routinely
399 performed. The urine is examined, and certain other examinations as they seem useful in the individual case, which is judged by taking the history and doing the physical examination.

Q. Doctor, what may be the consequences of delay in instituting adequate and effective treatment of a person afflicted with some forms of arthritis?

Mr. Gettleman: If the Examiner please, we will object to that question. I don't think that even remotely is involved in the issues of this case.

Trial Examiner Lipscomb: Read the question, please.

(The reporter read the question as follows:

"Question: Doctor, what may be the consequence of delay in instituting adequate and effective treatment of a person afflicted with some forms of arthritis?")

Trial Examiner Lipscomb: Objection is overruled.

Mr. Gettleman: Exception.

Mr. Goding: May I be heard further on that, if the Examiner please? I feel that the issues involved in this hearing are very pointedly joined as to one, the meaning of certain advertising, and two, whether that meaning is false and misleading. This whole area of inquiry concerning the effects of delay in proper treatment, it seems to me, as Mr. Gettleman pointed out correctly, is so far removed from the issues that it is clearly incompetent.

Trial Examiner Lipscomb: The Trial Examiner re-
400 affirms his ruling.

Mr. Gettleman: Exception.

Mr. Callaway: Do you remember the question, Doctor?

The Witness: Will you repeat the question, please?

Mr. Callaway: Will you read it, Mr. Reporter?

(The reporter again read the question.)

The Witness: The effects of delay can be serious, particularly in the infectious type of arthritis, in which destruction of the joint tissue can take place very rapidly, as I think I already mentioned in the case of a virulent organism attacking the joint structure. Sometimes that can lead to serious consequences to the patient other than the loss of a joint, if septicemia or some other complication follows.

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As to the more chronic types of arthritis, the matter of delay is perhaps not so crucial, if delay is not prolonged too long.

I am thinking of another type of arthritis which we haven't discussed so far, that associated with the growth of tumors in joint tissue—so-called neoplastic arthritis. And if that is allowed to go on, of course, the consequences of the free growth of malignant tumor may take place before proper is instituted. The crucial thing there, of course, is the diagnosis.

By Mr. Callaway:

Q. Doctor, what is sciatica? You have given us
401 something about sciatica. Could you expand any on that?

A. Sciatica is a symptom of pain down the back of the hip, thigh and leg, and it can be due to all sorts of things, as I already said.

Q. Doctor, would each of the causes of sciatica which you have previously discussed require essentially a different kind of treatment?

Mr. Gettleman: Just a moment, Doctor. If the Trial Examiner please, I will interpose an objection to that, dealing with the cause and effect relationship, which is not germane to this issue. It is not a part of the complaint herein. I submit it is immaterial and irrelevant, and therefore objectionable.

Trial Examiner Lipscomb: Mr. Reporter, read the question, please.

(The reporter read the question as follows:

"Question: Doctor, would each of the causes of sciatica which you have previously discussed require essentially a different kind of treatment?")

Trial Examiner Lipscomb: Do you wish to respond to that?

Mr. Callaway: I might say, Mr. Examiner, that the complaint alleges that they have advertised this preparation as an adequate and effective and reliable treatment
for all forms of rheumatism and arthritis, and they
402 have denied that they have done that. The complaint further alleges that it is not an adequate and effective treatment for any form of arthritis or rheumatism. I specifically asked them the other morning if they were willing to concede it was not an adequate or effective treatment

for different forms of rheumatism or arthritis. They refused to concede that, sciatica being one of the forms, I certainly think I am entitled to make this proof.

Trial Examiner Lipscomb: Objection is overruled.

Mr. Gettleman: Exception, for the reasons previously stated, and those stated yesterday, so we will not have to repeat them.

Trial Examiner Lipscomb: Very well.

Mr. Callaway: Now, do you remember the question, Doctor?

The Witness: Please read it again.

(The reporter again read the question.)

The Witness: Insofar as the causes are different they require a different treatment. One wouldn't treat a tumor of the spinal cord the same way one would treat osteo-arthritis of the small joints of the back, both of which might lead to sciatica. Neither would one treat either of those two conditions in the same way one would treat a protruded intervertebral, which is a very common cause of sciatica.

403 By Mr. Callaway:

Q. Doctor, is there any drug or combination of drugs which can restore to normal the pathological changes that may occur in and give rise to sciatica?

Mr. Gettleman: If the Examiner please, that question will be objected to. No. 1, there has been no foundation laid here that this Doctor is qualified to answer a question like that. It requires an unlimited, if not impossible knowledge upon the Doctor, and he hasn't been qualified on those grounds. Secondly, the question of pathological changes is not involved in the issues herein. As has been stated before, the only question involved is the truth or falsity of the statements made. I submit that question is irrelevant and objectionable.

Trial Examiner Lipscomb: Objection is overruled.

Mr. Gettleman: Exception.

Trial Examiner Lipscomb: You may answer the question.

Mr. Callaway: Would you like to have it read again?

The Witness: Yes, please.

(The reporter read the question as follows:

"Question: Doctor, is there any drug or combination of drugs which can restore to normal the pathological changes that may occur in and give rise to sciatica?")

The Witness: No.

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404 By Mr. Callaway:

Q. Doctor, what is the predominant symptom of sciatica?

A. The predominant symptom of sciatica is pain located in the region of the hip and back of the leg and thigh.

Q. Doctor, have you seen the formula for the product called Imdrin?

A. Yes, I have seen it.

Q. And its directions for use as set forth in the complaint?

A. Yes.

Q. You have seen the complaint? I gave you a copy of the complaint, did I not?

A. Yes.

Q. Doctor, in your opinion, what effect would Imdrin taken as directed have on the pains of sciatica?

Mr. Gettleman: If the Examiner please, I will object to that question. I don't believe this witness has been qualified or testified to qualifications regarding this product Imdrin. There has been no showing whatsoever that he is familiar with the product sufficiently to base any opinion upon it.

Mr. Callaway: He is certainly familiar with the formula and directions for use, he says.

Mr. Gettleman: He has never used it.

Mr. Callaway: That is not necessary.

Mr. Gettleman: That is my objection.

405 Mr. Callaway: Courts have held against him on that many times.

Trial Examiner Lipscomb: The objection is overruled. You may answer the question.

Mr. Callaway: Read the question back for the Doctor.

(The reporter read the question as follows:

"Question: Doctor, in your opinion, what effect would Imdrin taken as directed have on the pains of sciatica?")

The Witness: I would expect it to have at the most a temporary and partial effect in relief of pain—at the most.

By Mr. Callaway:

Q. Doctor, in your opinion can Imdrin taken as directed be relied upon to usually or ordinarily relieve the pains of sciatica completely?

A. Not in my opinion—

Mr. Gettleman: Just a moment. If the Examiner please, I will object to that question, on the grounds that I have

previously stated, and upon this additional ground, that it is definitely leading and calls for an answer which is really the ultimate conclusion that you are to reach, that the Commission is to reach at the end of this case. I submit it is in bad form, and it is objected to.

406 Trial Examiner Lipscomb: Will you read the question, please?

(The reporter read the question as follows:

"Question: Doctor, in your opinion can Imdrin taken as directed be relied upon to usually or ordinarily relieve the pains of sciatica completely?")

Mr. Gettleman: He should ask what effect it might have on sciatica, but not lead him as he is, I submit.

Trial Examiner Lipscomb: The objection is overruled.

Mr. Gettleman: Exception.

Mr. Callaway: I believe you have answered that, have you, Doctor?

The Witness: I answered it.

By Mr. Callaway:

Q. Doctor, suppose that the dose of Imdrin were doubled, that is, double what is set forth in the complaint, in your opinion what effect would doubling the dose of Imdrin have on the pains of sciatica?

Mr. Gettleman: If the Examiner please, that will be objected to. That is not an issue in this case. Whether the dosage is doubled or tripled, or cut in half, is not directly or indirectly involved in the issues of this case. For that reason I object to that question.

Mr. Callaway: It certainly has bearing on the effec-

407 tiveness of this preparation.

Trial Examiner Lipscomb: Objection is overruled.

Mr. Gettleman: Exception.

Trial Examiner Lipscomb: You may answer the question.

The Witness: My answer would be the same.

By Mr. Callaway:

Q. Doctor, what is neuritis? You have already explained that, I believe.

A. Neuritis is pain felt in the distribution of the sensory nerve. It is usually considered that way.

Q. And you have also, I believe, covered some of the causes of neuritis, too, Doctor. Would each of the causes

of neuritis which you have mentioned previously require essentially a different line of treatment?

Mr. Gettleman: If the Examiner please, that question is objected to, because it is going into cause and effect, which is not an issue in this matter.

Trial Examiner Lipscomb: Objection is overruled.

Mr. Gettleman: Exception.

Trial Examiner Lipscomb: You may answer the question.

The Witness: Each cause would require necessarily a different treatment.

408 By Mr. Callaway:

Q. Doctor, in your opinion is there any drug or combination of drugs which can restore to normal the various pathological changes which occur in neuritis?

Mr. Gettleman: If the Examiner prese, that is objected to, for the reasons given previously on similar questions.

Trial Examiner Lipscomb: Objection is overruled.

Mr. Gettleman: Exception.

The Witness: The answer is no.

By Mr. Callaway:

Q. Doctor, in your opinion, what is the predominant symptom of neuritis?

A. The predominant symptom—do you mean neuritis as the lay usually consider it, or as perhaps loosely considered?

Q. Yes.

A. The predominant symptom is pain.

Q. In your opinion, what effect would Imdrin taken as directed have on the pain of neuritis?

A. It might possibly relieve it temporarily, partially—at the most that.

Q. In your opinion can Imdrin taken as directed be relied upon to usually or ordinarily relieve the pains of neuritis, completely?

Mr. Gettleman: If the Examiner please, that is ob-
409 jected to because it is definitely not an issue in the case, and secondly because it is leading directly.

Mr. Goding: I think that the question should be stricken, if the Examiner please. The previous question, I think was a properly phrased question. I think the answer to the previous question was comprehensive, and that that told the story. What Mr. Callaway seeks now is something

more specific, and I suggest that it has a tendency to put words in the Doctor's mouth. I think it is highly unfair. We are now in the area which I think comes very closely to the crux of this whole situation. I therefore move that the question be stricken.

Trial Examiner Lipscomb: Mr. Reporter, will you read the question, please?

(The reporter read the question as follows:

"Question: In your opinion can Imdrin taken as directed be relied upon to usually or ordinarily relieve the pains of neuritis, completely?")

Trial Examiner Lipscomb: Off the record.

(Discussion off the record.)

Trial Examiner Lipscomb: On the record.

The objection is sustained.

Mr. Callaway: I think I had better take an exception to that ruling myself.

410 By Mr. Callaway:

Q. Suppose the dosage of Imdrin were doubled. In your opinion, what effect would Imdrin in doubled dosage have on the pain of neuritis?

Mr. Gettleman: If the Examiner please, that is objected to upon the reasons that we have given previously; the same type of objection.

Trial Examiner Lipscomb: Objection is overruled.

Mr. Gettleman: Exception.

The Witness: Could I have it read back? I'm sorry.

(The reporter read the question again.)

Mr. Callaway: I am referring to the dosage set forth in the complaint.

The Witness: Merely temporarily and partially.

By Mr. Callaway:

Q. Doctor, what is neuralgia?

A. It is almost synonymous with the way we have been using the word "neuritis." That is, it is pain in the distribution of a nerve, usually very severe, stubborn.

Q. In your opinion, Doctor, what effect would Imdrin taken as directed have on the pains of neuralgia?

A. Temporary and partial effect might take place, but the pains of neuralgia are often very serious, and I wouldn't expect anything more than that.

Q. Doctor, in the more severe pains of neuralgia, in your opinion, what effect would Imdrin taken as directed have?

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Mr. Gettleman: If the Examiner please, that is objected to as leading, and I believe that question has been answered already. That is putting words in the Doctor's mouth.

Mr. Callaway: I am not putting any words in the Doctor's mouth. I am asking in reference to severe pains. I don't know how else I can find them.

Trial Examiner Lipscomb: Of course, the questions certainly ought to be framed so they won't be leading.

Mr. Goding: If the Examiner please, I think that the previous question again is a comprehensive one which to this well qualified expert would mean everything about pain. Now, to permit specification after asked the comprehensive question is, I think, in the area of a leading question. Whether he is putting words in the Doctor's mouth or whether by this device he indicates to the Doctor he wants something just a little bit more, I think it is highly unfair to permit it.

Trial Examiner Lipscomb: Objection sustained.

By Mr. Callaway:

Q. Doctor, what is fibrositis?

A. Fibrositis is an ill-defined condition which involves muscular fibrous tissues of the body, usually associated with stiffness, pain on motion, sometimes pain at rest. It has various forms, some of which have pathological changes in them that can be demonstrated by X-rays or other forms of examination, and some of which almost defy demonstration.

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Q. What is the predominant symptom of fibrositis, Doctor?

A. Pain, stiffness, aching, tenderness of muscles, tendons, and fibrous tissue generally.

Q. Doctor, can Imdrin taken as directed be relied upon to usually or ordinarily relieve the pains of fibrositis completely?

Mr. Gettleman: If the Examiner please, I will object to that question. I again state that that is leading. The question should be what effect, if any, it would have, and not using a descriptive adjective, as Mr. Callaway has been doing repeatedly.

Trial Examiner Lipscomb: I think the objection is well taken. The objection is sustained.

Mr. Callaway: May I be heard on that, first?
Trial Examiner Lipscomb: You may.
Mr. Callaway: The objection before was that I had asked him what effect would Imdrin have on the pain.
Trial Examiner Lipscomb: Off the record.
(Discussion off the record.)
Trial Examiner Lipscomb: On the record. Proceed.

By Mr. Callaway:

Q. Doctor, can you tell us whether or not there are 413 cases of neuralgia in which Imdrin would have no effect upon the pain?

Mr. Brodkey: I object to that as leading, if the Examiner please. If that isn't suggestive, I don't know what is: "Can you tell us whether or not at any—?"
Trial Examiner Lipscomb: Off the record.
(Discussion off the record.)
Trial Examiner Lipscomb: On the record.
Objection is sustained. The attorney may rephrase his question.

By Mr. Callaway:

Q. Doctor, what effect, in your opinion, would Imdrin have on the more severe pains of neuralgia?

Mr. Gettleman: If the Examiner please, that is objected to for the same reasons. It is the same type of questioning, using the word "severe" kinds of pain. Now, I submit that the question is bad. It is unfair, and it is leading the witness.

Mr. Brodkey: If the Trial Examiner please, may I also interpose at this point that if this colloquy means anything we have defeated our own purpose by it. The Doctor has been here sitting on the stand, listening to it. As an intelligent individual he undoubtedly appreciates the import of our arguments and knows what is expected of him should a proper question be directed to him now. He knows exactly what Mr. Callaway wants to hear, at least, if he can 414 agree with it. I submit that is bad in and of itself.

Trial Examiner Lipscomb: That is one of the difficulties of the judicial process.

Mr. Brodkey: It should at least prove the possibility of leading a witness into temptation by the use of a leading question, because here we have demonstrable evidence of how it may result. If it were insurmountable there would

be nothing we could say, but I can't appreciate that this is a condition that can't be rectified.

Trial Examiner Lipscomb: Off the record.

(Discussion off the record.)

Trial Examiner Lipscomb: On the record.

Objection overruled. Doctor, you can answer the question to the best of your judgment.

Mr. Gettleman: Exception.

Mr. Callaway: Will you read the question, please?

(The reporter read the question as follows:

"Question: Doctor, can you tell us whether or not there are cases of neuralgia in which Imdrin would have no effect upon the pain?')

The Witness: Very slight effect, temporary only.

By Mr. Callaway:

Q. Doctor, in your opinion what effect would Imdrin taken as directed have on the pains of fibrositis?

A. Temporary and partial effect on the pains, possibly.

415 Q. Doctor, suppose the dosage of Imdrin were doubled according to that set forth in the complaint, in your opinion, what effect would Imdrin taken in doubled dosage have on the pains of fibrositis?

Mr. Gettleman: If the Examiner please, that is objected to for the reasons previously given.

Trial Examiner Lipscomb: Objection overruled.

Mr. Gettleman: Exception.

The Witness: Merely a temporary, partial effect.

By Mr. Callaway:

Q. Doctor, you have told us what bursitis is, and you have told us some of the causes of bursitis, I believe. Would the pathological changes which occur in bursitis vary according to the cause?

Mr. Gettleman: That is objected to, if the Examiner please, for the reasons previously given. I don't think pathological changes are in issue in this case.

Trial Examiner Lipscomb: Objection overruled.

Mr. Gettleman: Exception.

The Witness: Will you read it, please?

(The reporter read the question as follows:

"Question: Doctor, you have told us what bursitis is, and you have told us some of the causes of bursitis, I be-

lieve. Would the pathological changes which occur in bursitis vary according to the cause?")

416 The Witness: Yes, they vary greatly according to the cause. Sometimes there is calcium in it because of the degenerative deposition there. Bursitis can be due to gout, with urate deposits in the bursa, due to inflammation due to bacteria, or can be due to trauma such as violence.

By Mr. Callaway:

Q. Would each of the causes of bursitis that you have mentioned require essentially a different kind of treatment, Doctor?

A. Yes, each one would need a different kind of treatment.

Q. What effect, if any, on the final outcome of the patient's condition would the time at which appropriate treatment of bursitis was begun have?

Mr. Gettleman: I object to that, if the Examiner please. Number one, I don't understand it. It is a compound question. I would like to have it read over again. It sounded very strange to me.

Trial Examiner Lipscomb: Will you read it, please?

(The reporter read the question as follows:

"Question: What effect, if any, on the final outcome of the patient's condition would the time at which appropriate treatment of bursitis was begun have?")

Mr. Callaway: That is a little awkward, but I think the idea is there.

417 Trial Examiner Lipscomb: I think I understand it, but do you wish to rephrase it?

Mr. Callaway: That is about as good as I can do. Does the Doctor understand it?

Mr. Gettleman: I will object to that, if the Examiner please. In addition to the reason I have stated before, that it is practically unintelligible, it is calling for an answer concerning matters that are not in issue here in this case, and I suggest it is irrelevant.

Mr. Callaway: I will rephrase it a little bit.

By Mr. Callaway:

Q. Would the time at which appropriate treatment of bursitis was begun have any effect on the final outcome of the patient's condition?

Mr. Gettleman: That also is objected to, if the Examiner please, for the reasons previously given in reference to any matters touching upon the time of treatment or the cause or effect.

Trial Examiner Lipscomb: Objection overruled.

Mr. Gettleman: Exception.

Mr. Callaway: Do you understand the question, Doctor?

The Witness: The earlier the treatment the earlier the patient would be likely to get well, if the treatment was appropriate.

418 By Mr. Callaway:

Q. Doctor, in your opinion is there any drug or combination of drugs which can restore to normal the various pathological changes that may occur in bursitis?

Mr. Gettleman: If the Examiner please, that is objected to, for the reasons previously given in reference to the same type of question.

Trial Examiner Lipscomb: Objection is overruled.

Mr. Gettleman: Exception.

Mr. Callaway: Do you remember the question?

The Witness: Would you read it, please?

(The reporter read the question as follows:

"Question: Doctor, in your opinion is there any drug or combination of drugs which can restore to normal the various pathological changes that may occur in bursitis?")

The Witness: No.

By Mr. Callaway:

Q. Doctor, will you describe for us the character of the pain in bursitis?

A. Its onset is often very sudden, but I might preface my answer by saying that the character depends somewhat on the cause. For exemple, a tennis elbow might be caused from a different thing than degeneration of the supersphenous tendon, but the character of it is often
419 sudden in onset. It is often extremely severe, so that the patient is unable to use the member affected. If it is the shoulder, it is often held close to the body, and any touching of the arm or even bumping into a person in a crowd, or even turning over in bed, or using the arm to eat or brush one's teeth, or anything of that sort, is avoided instinctively and involuntarily, because of the pain.

Q. Now, Doctor, what, in your opinion, what effect would Imdrin taken as directed have on the pain of bursitis?

A. A temporary and partial effect only.

Q. And suppose the dosage of Imdrin were doubled according to that stated in the complaint, would your answer be the same?

Mr. Gettleman: That is objected to, if the Trial Examiner please. That is not in issue, as to whether the dosage is doubled, tripled, or cut in half. We have one formula here, and one set of directions. I think they should be adhered to.

Trial Examiner Lipscomb: Objection overruled.

Mr. Gettleman: Exception.

The Witness: The answer is the same.

By Mr. Callaway:

Q. Doctor, you have told us what gout is, and you have already explained some of the pathological changes which may occur in gout. In your opinion, is there any drug or combination of drugs which can restore to normal the 420 structures that may be damaged in gout?

Mr. Gettleman: That is objected to, if the Trial Examiner please, on the same ground as repeatedly stated before.

Trial Examiner Lipscomb: Overruled. You may answer the question, Doctor.

The Witness: There is no such drug.

By Mr. Callaway:

Q. Or combination of drugs?

A. Or combination of drugs, in my opinion.

Q. What, in your opinion, is the predominant symptom of gout?

A. The predominant symptom of gout is severe pain and swelling of joints, in the early stages. Later the predominant symptom may be crippling, as that word is usually understood, and even in the late cases, the predominant symptom may not refer to joints so much as to loss of kidney function, high blood pressure.

Q. Doctor, I believe you have stated that one of the symptom may be severe pain. What in your opinion, would be the effect of Imdrin taken as directed on the severe pain of gout?

Mr. Gettleman: That is objected to, if the Trial Examiner please. That is distinctly leading again, putting the adjective "severe" pain into the mouth of this witness.

Mr. Callaway: He used it himself.

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Trial Examiner Lipscomb: Objection overruled.
421 Mr. Gettleman: Exception.
Trial Examiner Lipscomb: Exception noted.
The Witness: I believe the answer would be that the effect would be very small, temporary only

By Mr. Callaway:

Q. Doctor, suppose the dosage of Imdrin were doubled in accordance with the dosage set forth in the complaint, would your answer be the same?
Mr. Gettleman: Objection.
Trial Examiner Lipscomb: Objection noted.
Mr. Goding: I think we might shorten the objecting process if we would just refer to the same objection by that language in those cases where the questions are basically repetitive. Where the questions are repetitive we might oppose with a repetitive objection.
Trial Examiner Lipscomb: You may do that.

By Mr. Callaway:

Q. Doctor, you have told us something about osteoarthritis. Do you feel yourself that you have gone into the causes of osteoarthritis fully, or would you like to go into that some more?
A. I can talk more about it.
Mr. Gettleman: If the Examiner please, I will object to that. That has been covered by this witness.
Mr. Callaway: I am asking him if he thinks he has
422 covered it.
Trial Examiner Lipscomb: I will sustain your objection.

By Mr. Callaway:

Q. Doctor, what are the various clinical stages in the course of osteoarthritis?
A. The first stage has to do with degenerations that occur in the cartilage which forms part of the lining of the joints. It breaks up, and later, as the joint moves back and forth the two surfaces rub together and the cartilage may form little loose bodies, or may be ground and disappear. The joint surface becomes misshapen and roughened, in the way a rough hinge does. The clinical stages along with these changes I have described, and reflect themselves in such symptoms as pain, stiffness, grating, lock-

ing of a joint, swelling, the appearance, particularly in certain finger joints, of curious enlargements, and so on.

Trial Examiner Lipscomb: We will recess until 12:45.

(Whereupon, at 12:00 noon, a recess was taken until 12:45 p. m., this day.)

423 Afternoon Session.

12:45 p. m.

Trial Examiner Lipscomb: The hearing will come to order.

Mr. Brodkey: May it please the Examiner, I wish to move to strike at this time the questions and answers to which objection has been made. It seems to me that those questions, plus those which I anticipate will follow in this trend and vain, all go to some aspect of the case, which for reasons which we have heretofore stated, are irrelevant, in that they will unquestionably in some degree hinge upon the claim that a cure must be attendant upon the various stages of the particular pathological condition, and so on. We object to those questions, and any like them which may follow.

Trial Examiner Lipscomb: The objection to strike is denied.

EVAN M. BARTON resumed the stand and testified further as follows:

Direct Examination (Continued) by Mr. Callaway.

Q. Doctor, would the different clinical stages of this disease, this condition, require essentially different kinds of treatment?

Mr. Gettleman: Same objection.

424 Trial Examiner Lipscomb: Objection overruled.

Mr. Gettleman: Exception.

Trial Examiner Lipscomb: Exception noted.

The Witness: Yes, the treatment at any stage is different, depending upon the exact process that is going on at that time. It might be medicinal at one time, and require orthopedic measures, physical measures, X-ray therapy, even, at other times.

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By Mr. Callaway:

Q. Doctor, in your opinion, is there any drug or combination of drugs which can restore to normal the structures that are damaged in osteoarthritis?

Mr. Gettleman: Same objection, if the Examiner please.

Trial Examiner Lipscomb: Objection overruled.

Mr. Gettleman: Exception.

The Witness: No.

By Mr. Callaway:

Q. Doctor, I believe you have told us that pain is one of the symptoms of osteoarthritis. In your opinion what effect would Imdrin taken as directed have on the pain of osteoarthritis?

A. A slight effect, temporary in nature.

Q. Doctor, suppose the dosage of Imdrin were doubled, in your opinion, what effect would Imdrin in doubled
425 dosages as set forth in the complaint have on the pain of osteoarthritis?

Mr. Gettleman: Same objection, if the Trial Examiner please.

Trial Examiner Lipscomb: Same ruling. Exception noted.

The Witness: Same answer.

By Mr. Callaway:

Q. Doctor, you have told us something about what rheumatoid arthritis is and what some of the pathological changes which occur in rheumatoid arthritis are. In your opinion, is there any drug or combination of drugs which can restore to normal all of the structural changes that may occur in rheumatoid arthritis?

Mr. Gettleman: Objection to that, if the Trial Examiner please.

Trial Examiner Lipscomb: Objection overruled.

The Witness: Was the question in regard to a drug that would restore these things?

Mr. Callaway: Yes, will you read the question?

(The reporter read the question as follows:

"Question: Doctor, you have told us something about what rheumatoid arthritis is and what some of the pathological changes which occur in rheumatoid arthritis are. In your opinion, is there any drug or combination of drugs which can restore to normal all of the structural
426 changes that may occur in rheumatoid arthritis?")

The Witness: No.

By Mr. Callaway:

Q. Is the cause of rheumatoid arthritis known?

Mr. Gettleman: Objection to that question, if the Trial Examiner please. That is going into the causes.

Trial Examiner Lipscomb: Overruled.

Mr. Gettleman: Exception.

The Witness: The cause of rheumatoid arthritis is unknown. It has been thought for a long time that it is related to infections, but there is no clear evidence that that is true at present.

By Mr. Callaway:

Q. I believe you have told us that pain is one of the symptoms of rheumatoid arthritis. In your opinion, what effect would Imdrin taken as directed have on the pains of rheumatoid arthritis?

Mr. Gettleman: He answered that, if the Examiner please, just a moment ago, I believe.

Mr. Goding: Mr. Gettleman, I think the question was directed to osteoarthritis at that time. This is the same question with respect to rheumatoid arthritis.

Mr. Gettleman: I see.

The Witness: It might cause slight, temporary re-
427 duction of pain.

By Mr. Callaway:

Q. Suppose the dosage of Imdrin were doubled according to that set forth in the complaint, would your answer be the same?

Mr. Gettleman: Objection to that question, if the Trial Examiner please.

Trial Examiner Lipscomb: Objection overruled.

The Witness: The answer would be the same.

By Mr. Callaway:

Q. Now, you discussed for us infectious arthritis and some of the causes of infectious arthritis, I believe. Would each of the causes of infectious arthritis, Doctor, require essentially different kinds of treatment?

Mr. Gettleman: Same objection, if the Examiner please.

Trial Examiner Lipscomb: Read the question, please.

(The reporter read the question as follows:

"Question: Now you discussed for us infectious arthritis and some of the causes of infectious arthritis, I be-

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lieve. Would each of the causes of infectious arthritis, Doctor, require essentially different kinds of treatment?")

Mr. Gettleman: That has been answered before, in addition to my general objection.

Mr. Callaway: No, that was about osteoarthritis.

428 Mr. Gettleman: I think that was asked before, earlier this morning. I am quite sure.

Trial Examiner Lipscomb: It is not my intention to permit repetitious inquiry, but it is a small matter. Objection is overruled. That is, that point is overruled.

The Witness: It is important to decide what the cause is in infectious arthritis, because different organisms in a joint respond in different ways to various agents. Penicillin might affect one organism in the joint, streptomycin, another, and some of the other drugs of that type, still others. Sulphonamide drugs, for example, are sometimes useful in that connection. It depends upon the type of infectious arthritis that is found just what measures would be used against it.

By Mr. Callaway:

Q. Doctor, have you discussed for us the pathological changes which may occur in infectious arthritis? I know you have done so in connection with rheumatoid arthritis and osteoarthritis.

A. I made some reference to the fact that when these organisms enter a joint the joint can sometimes very quickly be destroyed. I don't think I discussed the pathology much further than that. The destruction of the joint is something which is irreparable under those circumstances, because cartilage doesn't have the power

429 to repair itself, and often bone itself is destroyed and the whole joint becomes unrecognizable as such.

Q. Doctor, is there any drug or combination of drugs which can restore to normal the structures which may be damaged in infectious arthritis?

A. After the damage has occurred, no.

Q. Would you tell us something about the symptoms of infectious arthritis, Doctor? I don't believe you have discussed that.

A. Briefly, there is fever, pain in the part. The various types of infectious arthritis have a tendency to affect single joints in the body rather than multiple joints. And along with the fever and the pain there is redness, great

tenderness. The patient will not move the joint, or he may draw the part up into an abnormal position in order to keep it in the most painless position for him.

Q. Doctor, would you tell us something about the character of the pain in infectious arthritis?

A. It is very often sudden, but not always. It is usually very severe, and it usually requires—it may even require narcotics such as codeine to alleviate it, because of its severity.

Q. Doctor, in your opinion, what effect would Imdrin taken as directed have on the pain of the infectious arthritis?

A. On acute infectious arthritis I would say that the effect would be negligible.

Q. And suppose the dosage of Imdren were doubled
430 to that set forth in the complaint, would your answer be the same?

Mr. Gettleman: Same objection.

Trial Examiner Lipscomb: Objection overruled.

The Witness: The answer would be the same.

By Mr. Callaway:

Q. Doctor, are a great many people in this country crippled as a result of arthritic conditions?

A. Yes, it is one of the large causes of chronic disability, absence from work in the country.

Q. Are many of them bed-ridden?

A. Many are bed-ridden.

Q. Are many of them on crutches?

A. Many are on crutches or have to get about on a wheel chair, or be carried in various types of conveyance if they have to go anywhere.

Q. Have many of them lost the use of hands and arms and lower extremities?

A. Yes. Sometimes that is equivalent to having the extremity absent. They are unable to use the arm or the leg or anything, and it is in the way.

Q. Are many of those afflicted with these conditions unable to earn a livelihood because of their affliction?

A. Yes, many of them are.

Q. Doctor, in your opinion will Imdrin taken as directed arrest the progress or correct the underlying cause of
431 any kind of arthritis?

Mr. Gettleman: Objection, if the Trial Examiner please, for the reasons previously stated.

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Trial Examiner Lipscomb: Objection overruled.

The Witness: In my opinion Imdrin wouldn't change the course of them at all.

By Mr. Callaway:

Q. What about neuralgia?

Mr. Gettleman: The same objection.

Trial Examiner Lipscomb: Objection overruled.

Mr. Callaway: I mean to ask you the same question in regard to neuralgia. Maybe I had better restate it.

The Witness: I wish you would state that again.

By Mr. Callaway:

Q. In your opinion will Imdrin taken as directed arrest the progress or correct the underlying cause of neuralgia?

A. No.

Q. Will it arrest the progress or correct the underlying cause of bursitis?

A. No.

Q. Gout?

A. No.

Q. Neuritis?

A. No.

Q. Fibrositis?

432 A. No.

Q. Sciatica?

A. No.

Q. Rheumatism, as an all-inclusive term?

A. As an all-inclusive term, I would hesitate to discuss it. I would rather not discuss all these things together.

Q. Doctor, in your opinion will Imdrin taken as directed cure or prevent the recurrence of any kind of arthritis?

Mr. Gettleman: Same objection, if the Trial Examiner please, to all of these questions.

Trial Examiner Lipscomb: Overruled.

The Witness: No.

By Mr. Callaway:

Q. Will it prevent or cure the recurrence of gout?

A. No.

Q. Fibrositis?

A. No.

Q. Neuritis?

A. No.
Q. Neuralgia?
A. No.
Q. Bursitis?
A. No.
Q. Sciatica?
A. No.

433 Q. Doctor, in your opinion is Imdrin taken as directed an adequate, effective or reliable treatment for any kind of arthritis?

A. No. An adequate treatment requires much more than a tablet. It requires some of the measures I have already mentioned, including proper diagnosis, physical therapy and other things.

Q. Is it adequate, effective or reliable treatment for bursitis?

A. No.
Q. Gout?
A. No, sir.
Q. Fibrositis?
A. No.
Q. Neuritis?
A. No.
Q. Neuralgia?
A. No, sir.
Q. Sciatica?
A. No.

Q. Doctor, in your opinion, is Imdrin taken as directed an adequate, effective or reliable treatment for the symptoms and manifestations of any kind of neuritis?

A. No. I think its effect would usually be negligible, in my opinion.

434 Q. Is it an effective or reliable treatment for the symptoms and manifestations of any kind of fibrositis?

A. No.
Q. Neuralgia?
A. No.
Q. Sciatica?
A. No.
Q. Bursitis?
A. No.
Q. Gout?
A. No.
Q. Neuritis?

A. No.

Q. Doctor, you have considered this preparation in the light of the directions for use as stated in the complaint. If dosage were increased to double that amount would your answers be the same?

A. Yes.

Mr. Goding: We are objecting, of course.

Mr. Gettleman: The objection is continuous.

The Witness: The answer will be the same.

Mr. Callaway: That is all I have on direct examination.

Trial Examiner Lipscomb: Would you like to confer together a few minutes, or are you ready to go right
435 into cross examination?

Mr. Gettleman: We are ready.

Cross-Examination by Mr. Gettleman.

Q. Doctor, is it not a fact that when many people reach the middle age they suffer with muscular joints or ache, pains, pains in the joints and muscles?

A. Excuse me, sir. The term "muscular joint" has no meaning to me.

Q. Muscles or joints, let's put it that way.

A. Would you rephrase the question?

Q. Yes. Is it not true, Doctor, that many people reaching middle age often complain of muscular aches or pains in the joints?

A. Yes, that is true.

Q. And most of those people, Doctor, are ambulant, are they not?

A. I don't know that. I don't know what the complaints are. They vary from patient to patient. We would have to discuss people individually.

Q. Are there more bed-ridden patients suffering with rheumatism or arthritis than there are ambulant patients?

A. That would be a mere guess on my part. I don't know the figures.

Q. Why don't you give us a guess?

436 Mr. Callaway: I object to that.

Mr. Gettleman: If all he can do is guess. He is a specialist.

Mr. Callaway: He is not called upon to guess.

Trial Examiner Lipscomb: Your word is somewhat objectionable, but you mean an estimate, I believe.

Mr. Gettleman: That is right. Give us your estimate, Doctor.

The Witness: I find it hard to estimate.

By Mr. Gettleman:

Q. Is that because you don't know?

Mr. Callaway: I object to that question.

Mr. Gettleman: I am asking him why. He is a specialist. He ought to know. He has had a great many people suffering with rheumatism or arthritis. I want to find out how many, why, what.

The Witness: What is your question again?

Mr. Gettleman: Read the question, please.

(The reporter read the question as follows:

"Question: Are there more bed-ridden patients suffering with rheumatism or arthritis than there are ambulant patients?")

The Witness: Ambulant patients suffering with rheumatism or arthritis?

Mr. Gettleman: Yes, of course.

437 The Witness: I just don't know how to estimate it very well. One would assume from the way things usually work that perhaps people more severely affected would be the ones that were bed-ridden. One can't be sure of that, because sometimes the most severely affected joints don't place a person in bed. It depends on the stage of the arthritis and the individual patient's disease.

By Mr. Gettleman:

Q. Doctor, will you tell us, if you know, how many sufferers there are with rheumatism and arthritis in the United States?

A. It has been estimated in the neighborhood of seven million, I believe, by the United States Public Health Service.

Q. You are in the private practice dealing with rheumatism and arthritis, are you not, Doctor?

A. I am in private practice in medicine.

Q. Oh, the general practice?

A. No, I am an internist.

Q. And is your practice exclusively dealing with patients suffering with rheumatism or arthritis?

A. No.

Q. Oh, it is not?

A. Not exclusively. It is an interest of mine.

Q. Did I understand you to say correctly that you treated something like 2,300 patients last year?

A. No, that is not what I said. I said the admis-
438 sions on that ward were approximately that number.

Q. You didn't treat that many, did you, Doctor?

A. I had charge of a lot of them.

Q. When you say you had charge, does that mean that you treated a lot of them?

A. It means that I supervised their care.

Q. What do you mean by supervised?

A. In this way. I am glad you mentioned that, because that brings up the whole question of treatment again. It is a group affair, and requires such things as hospitals and hospitals require house officers, residents, nurses, and consultants in the form of orthopedists, physical therapy technicians, X-ray examinations and X-ray treatments, and all the ancillary services that medicine can afford. And in connection with the patients on my service in the ward that I had to do with, I happened to be the captain of the team, so to speak, supervising their care.

Q. Tell me, Doctor, you testified as to many patients having lost the use of their limbs, for instance, their hands, legs, through arthritis, did you not?

A. I testified that it was possible, yes.

Q. You have seen those cases?

A. Yes.

Q. Did you ever treat any of those cases?

A. Yes.

439 Q. Will you tell us whether or not you have cured all of those cases you have seen?

A. Certainly not.

Q. Many of those cases are incurable, are they not, Doctor?

A. Yes, but one still tries to manage them and treat them.

Q. That is right. And one still tries to alleviate the pain that accompanies those diseases, do they not?

A. One searches for the most effective means of removing the pain.

Q. Pain is very important to be relieved, is it not?

A. It is an important thing to be relieved.

Q. Would you say it is very important?

A. Sometimes deformity is more important, and we have that come up in cases where pain, for example, in the

knees, causes people to hold their knees in a contracted position, and one of our rules at the hospital is to prohibit the use of pillows under the patient's knees, even though it might increase their pain under those circumstances, because we must have in mind also the question of deformity, muscular contractions, etcetera.

Q. In all of these various types of rheumatism and arthritis, Doctor, they are usually accompanied by pain, are they not?

A. Pain is a cardinal symptom of rheumatism. Nobody objects to that.

Q. That is right. And in these infectious types of arthritis, let's take for instance that caused by gonor-
440 rhea, that also is accompanied by pain, is it not, Doctor?

A. Yes.

Q. And usually if the infection is cleared up the condition is ameliorated, if not cured; is that not right?

A. It depends on how long it has been present. Damage to joints can occur which deforms them and alters the structure, and so in that case a cure could not be said to be a complete cure.

Q. That is because of the delay in treatment; is that not right, in those cases?

A. Delay or improper treatment, or perhaps an organism that had been rendered resistant to whatever measures were used by previous exposure to these drugs, penicillin, and so on.

Q. In a case of infection of this type caused by gonorrhea, the possibility is that the person who has contracted it would know within the time of incubation that he would have gonorrhea; is that not right, Doctor?

A. Well, we can be very much surprised at the histories we got from people. Some people try to suppress that information, for reasons that would not always seem clear to us.

Q. But they would know it?

A. They may or may not, especially women.

Q. Doctor, ordinarily you try not to prescribe too much narcotics; is that not true?

A. One prescribes narcotics.

441 Q. Yes, as you mentioned, codeine?

A. Yes.

Q. You try to stay away from that if possible, because it is habit forming; is that not right, Doctor?

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A. Codeine is used in the amounts necessary as a rule, because it is quite simple to use, and it isn't a dangerous drug in the sense that morphine is, or some of the others.

Q. That is true, but it is regarded as a bit more dangerous than the salicylates; is that not true, Doctor?

A. Yes. The Harrison Narcotics Act is evidence in that decision.

Q. Now, there are certain types of arthritis in which there occurs degeneration of the bones; is that not right, Doctor?

A. Degeneration of the bones?

Q. Yes, bone structure.

A. Yes.

Q. And once that is destroyed you know of no medicine or drug that will restore that, do you?

A. No, that is not quite true. Perhaps you are referring to the degeneration or the degenerative process in bone that is called osteo paresis, or atrophy of bone, which accompanies disuse of a part from almost any cause; and that type of bone degeneration tends to repair itself as the part is made useful.

Q. It tends to repair itself, does it not, Doctor?

442 A. Yes.

Q. Tell me this. Once the cartilage is destroyed, that remains damaged, does it not, Doctor?

A. Cartilage, once it is destroyed, has very little power of regenerating itself. Another type of cartilage often forms over the denuded place where the original cartilage is lost.

Q. Doctor, will you tell us, if you know, the qualitative and quantitative formula of Imdrin?

Mr. Callaway: Do you want to refresh your memory?

The Witness: Could I refresh my memory on it?

Mr. Gettleman: No. I am asking you to tell us if you know it as you sit there now.

Mr. Callaway: I suggest that the Doctor be allowed to refresh his memory.

Mr. Gettleman: That is exactly what I don't want at the present time.

Trial Examiner Lipscomb: I think counsel has a right to propound his question.

Mr. Gettleman: I am asking for the qualitative and quantitative formula of Imdrin, Doctor?

The Witness: It has aspirin.

By Mr. Gettleman:

Q. How much?

A. It has 1.9 grains; I think that is what it says. And then it has manganese salicylate in considerably less amount. And it has a substance called calcium succinate in it. And it has vitamin B-1. And I can't remember the figures for it, exactly.

443

Q. You don't know the exact quantitative formula, do you?

A. No, I would have to refresh my mind on that, as I would look up any complicated drug.

Q. Did you examine the label of the product, Doctor?

A. I have seen the label.

Q. How long ago?

A. Oh, ten days ago.

Q. Doctor, did you ever use Imdrin?

A. You mean prescribed?

Q. Yes.

A. No.

Q. You have had no personal experience with the product, have you, Doctor, as to its use?

A. I haven't prescribed it. I have seen patients who have told me that they have used it.

Q. The question is, have you prescribed it?

A. The answer to that was no.

Q. Doctor, do you know of any one drug or combination of drugs that are used in the various types of rheumatism and arthritis that when administered will cure that condition?

A. I believe my opinion on that has perhaps already been made clear, in that the answer must be in the negative, since drugs alone are only part of the treatment of arthritis and rheumatism, whatever the drug is, and however good it is.

444

Q. Whatever it is, you don't know of any drug that you could administer that will give complete and permanent relief of pain, do you, in these various types of rheumatism or arthritis?

A. No.

Q. You don't know of any?

A. No, there isn't any, so far as I know.

Q. Then the most that the physician can prescribe is temporary relief also, is it not, from pain in those instances?

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A. I can prescribe effective relief, even though temporary.

Q. It will be temporary relief, will it not?

A. Yes, temporary but effective relief is possible.

Q. Tell us what that effective relief is.

A. It is effective when the pain goes away.

Q. And the only way that you know that the pain goes away is by what your patient tells you; is that not right?

A. Not entirely. There are other types of determining whether the pain is present in an individual than by what they tell you. There are involuntary motions when the part is pressed upon which signifies pain. There are involuntary contractions of muscles, called muscle-spasm, that can be demonstrated objectively, which indicate pain.

Q. But you can't measure that amount of pain,
445 can you, Doctor?

A. Yes, it can be measured.

Q. You can? By what means?

A. There is a group, I believe, in this city, in another hospital, that are measuring it by electrical means.

Q. You mean the Goodel tests? I am trying to help you—G-o-o-d-e-l. Is that what you are referring to?

A. I am not sure about that.

Q. Tell us, if you know, how it is measured, in what degrees?

A. It is measured by electrical activity of muscle.

Q. And what does that show?

A. Spasm or not.

Q. And would that tell you the exact degree of pain?

A. It is an objective measure of pain.

Q. In the last analysis, your pain is one of a subjective nature that the patient tells you about, is it not?

A. It is very helpful to have a patient tell one.

Q. And that is the way it is usually done, is it not?

A. We usually try every means we can to ascertain the effects of what we are doing.

Q. In your practice, Doctor, you have found out that some people can stand pain more than others; is that not right, Doctor?

A. Yes.

446 Q. Doctor, will you tell us, did you ever use that machine you refer to yourself?

A. No, I never used it.

Q. Is there any established nomenclature for the degrees of pain, that you know of?

A. Usually it is described as slight, moderate, severe, and so forth.

Q. Will you tell us that? That is what we are after, not "and so forth." I mean, we want it clearly demarcated.

A. Established by whom?

Q. By anyone you are talking about. If you know of any standard, that is.

A. I don't know of any objective standard such as you are talking about.

Q. Do you know of any subjective standard to describe the degrees of pain?

A. I think you can tell when a patient is having pain—it hurts.

Q. I think you can, too, Doctor, but I am trying to find out if there is any established, recognized nomenclature for the measurement or establishing the degrees of pain.

A. It depends on the method that you are using to elicit pain.

Q. Do you mean that each doctor has his own method?

A. No, I wouldn't say that each doctor has his own 447 method, but those that study it most have methods that they use that mean something to them.

Q. And you were trying to describe the degrees of pain by starting out, I believe, with mild, moderate, severe, and then you said "and so forth." I am trying to find out what that "so forth" is.

A. I was referring to such fancy words as excruciating, agonizing, and words of that kind.

Q. Do you use those adjectives?

A. Yes.

Q. Will you enlighten us and give us your degrees of pain? That is what I am trying to get at. Would you say mild, moderate, severe, excruciating, and what else, Doctor?

A. Pain is often described as deep pain, or aching pain, and sometimes it is described as sticking pain, or knife-like pain. And those terms refer to the character of the pain. In addition to that, there are terms that refer to the quantitative amount of pain, and one would use such terms as mild, moderate, and severe, in that connection.

Q. And the mild, moderate, and severe pains would differ in different individuals as they affect different individuals, would they not, Doctor? In other words, different people have a different propensity to withstand pain; is that not right?

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A. Yes, some people can bear pain better than others.

448 Q. There aren't any clear lines of demarcation between your mild and your moderate pain, would you say, Doctor?

A. One would have to have a base line in each case to draw a demarcation. It isn't a blanket term that you can apply to everybody.

Q. Would you tell us how you would describe a mild pain?

A. You could describe it as a pain which the patient didn't consider incapacitating or bothering him very much.

Q. And would you tell us what you would consider a moderate pain?

A. That would be a pain that was more severe, and which perhaps would give in addition to the patient's description of it more objective signs of pain such as we have already talked about.

Q. Would those patients suffering from those pains that don't bother them very much be apt to go to a doctor for treatment of those aches and pains, Doctor, do you know?

A. They sometimes do.

Q. That wouldn't be the majority of those suffering mild cases?

A. I beg your pardon.

Q. Would that be the majority of those within that mild group that would go to see doctors?

A. They might go to see a doctor for a reason not directly connected with the pain.

449 Q. I mean, suppose their only symptom that bothered them was the pain of mild intensity.

A. I think that would depend on where it was, and other characteristics of it.

Q. And what would you say about moderate pains, would those people be apt to go to a doctor for treatment of moderate pains?

A. Yes.

Q. And, of course, your severe category would certainly go to a physician for treatment of their severe pains of rheumatism and arthritis?

A. They might ask the physician to come to them.

Q. Yes. Now, Doctor, as a matter of fact, you know that about 80 per cent of the people, or more that are afflicted with aches and pains don't even go to doctors, do you not?

A. No, I don't know that.

Q. Do you read the literature on rheumatism and arthritis?

A. Oh, I read it, yes, I am acquainted with it.

Q. You are acquainted with it?

A. Not all of it, naturally. Some of it.

Q. Doctor, are you acquainted with the percentage of those that have gone to doctors and have received no relief for their aches and pains of rheumatism and arthritis?

A. Are there statistics of that sort?

Q. Yes, there are. Are you acquainted with them?

450 A. I am unfamiliar with any such statistics.

Q. You mean you are unacquainted with it?

A. I mean I am unfamiliar with any such statistics.

Q. Doctor, are you familiar with those statistics which show that group of people that get relief from their aches and pains with salicylates that they buy in drug stores? Are you acquainted with those statistics?

A. I don't think I quite understand the question.

Q. There are a group of people, of this seven million, that get relief from their aches and pains by buying their preparations in drug stores rather than being treated by doctors for those aches and pains. Are you acquainted with that figure out of the seven million?

Mr. Callaway: I object to that. I think that is a little unfair. He is stating it flatly that there is such figure, and he hasn't given any source or anything.

Mr. Gettleman: I am asking him if he is acquainted. I will show them to him. I want to find out how much he knows. He is the expert and not me.

Mr. Callaway: I object to the question. I think it is objectionable.

Mr. Gettleman: By virtue of what this witness said, if there are seven million, by his own figures five million at least would be under the supervision and treatment of physicians—which is utterly nonsensical.

451 Trial Examiner Lipscomb: Let the Doctor answer it. Objection overruled.

The Witness: I think the question is hard to answer categorically yes or no, because of the way arthritis acts. There are various types of especially chronic arthritis, and at some times in the course of the disease the patient will have a good deal of discomfort and disability and require medical help, and at other times they will perhaps

purchase aspirin in a drug store. And in any individual case there will be differences from any other case, so I can't answer your question.

By Mr. Gettleman:

Q. Doctor, will you tell us what you mean when you use the word "temporary"? How long a period of time is "temporary" as you have used it?

A. I have used it several times, I believe, in answering questions about the action of Imdrin. I have thought that temporary in most instances would be a matter of perhaps a few minutes, at the longest an hour, perhaps less.

Q. Is that what you mean by "temporary"—from a few moments—

A. In the sense that I used it under the questions to which I gave the answer, yes.

Q. From a few moments to an hour, perhaps?

A. Perhaps.

452 Q. Do you ever prescribe salicylates, Doctor?

A. Certainly.

Q. For relief of pain?

A. Certainly.

Q. Will you tell us what kind of relief that affords a patient?

A. It depends on the dose.

Q. What is your average dose?

A. That depends on the patient and how much he is suffering, what kind of trouble he has.

Q. Suppose he had mild pains, or she had mild pains.

A. If he or she had mild pains—. What was wrong with the patient? Would you define the case a little more exactly? You see, I can't prescribe without knowing anything about the patient.

Q. I am trying to describe it to you, but you can do it readily, I can see that. Are you familiar, Doctor, with the action of salicylates?

A. Reasonably so, perhaps.

Q. Salicylates don't give permanent relief, do they, Doctor?

A. Permanent relief for what?

Q. We are talking about aches and pains of rheumatism or arthritis, various forms of arthritis.

A. Which forms?

Q. Ones you talked about before.

453 A. I have declined to discuss rheumatism as a whole, and consider treating it as a group of things—

Q. We are not talking about treatment, Doctor, we are merely talking about the symptom of pain that you have testified to which accompanies each and every form of those diseases that you have discussed this morning. You said pain was the cardinal symptom in each one; is that not right?

A. Yes.

Q. Now, that is just the way I am handling it, just as you testified to. I am as specific as you are. Now, will you tell us whether or not when you prescribe salicylates they give permanent relief from the pains or aches that we are describing.

A. You have to keep prescribing it.

Q. They have got to keep taking it?

A. The patient has to keep taking it.

Q. Yes. In other words, there is no one or two dose or doses of any drug that you know of, salicylates or otherwise, that the patient can take and is free from the pain from then on; is that not right?

A. I find it hard to answer such general questions when I am used to dealing with particular patients and particular problems.

Q. When you say that the patient has to keep on taking it, in discussing your own prescriptions, doesn't that 454 mean in itself that the relief is temporary from each dosage that that person gets?

A. Yes.

Q. And the relief in that instance, as you have described before, might be up to an hour; is that right?

A. The relief conceivably could be up to an hour in the amount that I understood was present in Imdrin.

Q. You say "conceivably." You don't know of your own personal knowledge, by having tried this combination contained in Imdrin?

A. I have not prescribed Imdrin. I have already said that.

Q. Did you ever prescribe a similar combination, Doctor?

A. No.

Mr. Gettleman: May we have a recess for a few moments?

Trial Examiner Lipscomb: Yes.

(A short recess was taken.)

Trial Examiner Lipscomb: The hearing will come to order.

By Mr. Gettleman:

Q. Doctor, will you tell us, based on your experience and knowledge, whether or not it is a fact that the overwhelming majority of those suffering with pains of rheumatism or arthritis attend their daily work and functions?

A. That is that same question as to how many are
455 off work or in bed, isn't it? I would say—I will attempt to answer it—perhaps half of them are able to keep going.

Q. Then you would say about half—

A. At one time or another.

Q. (Continuing.) —of the seven million attend their work, and the other half are incapacitated. Is that what you mean, Doctor?

A. Not all the time. I think the disease varies in each person, and there are times when they have to quit, and there are times when they can go back, depending upon the effectiveness of their treatment and variations in their disease.

Q. And when you talk about the other half being able to go back to work at times, and the effectiveness of their treatment, you mean the effectiveness of the treatment that their own physicians are giving them, do you, Doctor?

A. Yes, the treatment they are receiving.

Q. And then according to your figures, about three million five hundred thousand are under the supervision or care of physicians?

A. Not constant care.

Q. At one time or another?

A. At one time or another.

Q. Can you tell us what that source of information of yours is, Doctor?

456 A. It is purely an estimate.

Mr. Callaway: You asked him for it based on his information and his knowledge.

By Mr. Gettleman:

Q. Doctor, will you tell us, if you know, whether or not that machine that you described is commonly used in the offices of doctors treating rheumatism and arthritis?

A. No, it is a research tool.

Q. In other words, it is a rare instrument; is that not right?

A. It is an instrument used for exact study and research.

Q. And would that be in research institutions primarily?
A. Yes, such as Michael Reece Hospital, for example.
Q. In other words, it would be more apt to be found in hospitals or research institutions rather than in offices of practitioners; is that not right?
A. Yes.
Q. Doctor, in the majority of cases in which there exists pain, the various types of rheumatism and arthritis, if the pain is relieved the joints will be more apt to function normally; is that not right?
A. That was a rather compound question. I wonder if I could have that again?
Q. Let me put it the other way. In the absence of pain there is more mobility to a joint than there is in the
457 presence of pain generally; is that not right?
A. Not generally. If there has been fibrous angiosis, there could be very little pain and still the joint could be quite stiff.
Q. Doctor, is it not a fact that a man can move his joints more easily if there is no pain than when there is a pain in any particular joint?
A. That depends on the physical condition of the joint and disease that the man has.
Q. Let's assume that there is no disease of the joint, Doctor, what would your answer be? Would a patient not be more readily apt to move his joint without pain than if pain were present?
A. I think that is a contradiction in terms, because if there is pain there one must assume some disease.
Q. Do I understand you, Doctor—I am not certain that I do,—that whenever there is pain there is a disease?
A. In the broad sense of the term disease, yes.
Q. Doctor, it is possible, is it not, to have pain without anything organically wrong with a person, as we use that term?
A. Yes, people can be hysterical.
Q. Can a person have a headache without having a disease, or is that a disease?
—A. Headache may be the representation of a dis-
458 ease, certainly. It may be a functional disease with temporary manifestations.
Q. Do you believe that wherever there is pain there is disease?
A. In the broad definition of the word disease, it is an abnormality of the part, and in that sense it is a disease.

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Q. In the broad use of the term disease, yes, but suppose we just take pain, do I understand you correctly that every time there is pain there is a disease present? That is what I am trying to understand.

A. There is some sort of a disturbance in that patient, and it may not be a condition which you can name by a well recognized disease that is in a classification in a textbook, but it is very likely due to some kind of alteration in that patient.

Q. Or disturbance?

A. Disturbance in the patient, which you would call disease.

Q. Doctor, usually in the treatment of these conditions you try to give the patient the utmost mobility of his joint, do you not?

A. No, sometimes the best treatment is to stiffen it.

Q. I mean, the ultimate result is to give him the utmost use and mobility of the affected joint, is it not?

A. That depends on the disease. I can talk further on that if you wish me to.

Q. Let's assume, Doctor, that a person has a pain 459 or an ache in the knee, and he goes to see a doctor. Would it not be the ultimate in the treatment to eradicate that pain and ache and ultimately give that patient as much mobility of the knee as possible?

A. That depends on what the patient has. If he would turn out to have tuberculous arthritis, one would perhaps have to fuse the knee and render it stiff to save him from dying of tuberculosis.

Q. I mean, in the ordinary situation, not where you have an infection.

A. I don't recognize the ordinary situation until we have made a diagnosis. It is a matter of each individual patient.

Q. You gave an example of a tennis elbow. Do you remember that?

A. I mentioned tennis elbow, that is right.

Q. Yes, and that is painful?

A. Yes.

Q. Can that ordinarily be cured, Doctor?

A. They often get well. There may be some residuals, but they often get well.

Q. Will you tell us what you mean by "well"?

A. So that a person can use it, play tennis with it again.

Q. So that a person can use it and have the greatest mobility of that joint; is that not right?

A. Yes.

460 Q. With the least amount of pain?

A. Yes.

Q. That is what I mean.

A. I would apply that to your remarks to tennis elbow without any particular objection, that is true.

Q. You would apply that to the majority of cases, would you not?

A. The majority of cases of tennis elbow?

Q. No, the majority of cases of aches and pains, Doctor.

A. No, I wouldn't. You have to tell what the aches and pains are before you apply it to them.

Q. You gave us an example of an infectious type caused by tuberculosis; is that not right?

A. Yes.

Q. Are those the majority of cases of patients suffering with rheumatism or arthritis?

A. No.

Q. They are the minority, aren't they?

A. They are probably more common than is often suspected, but they are not the great majority of chronic arthritis patients, of course.

Q. As a matter of fact, they are the great minority, are they not?

A. Tuberculosis, no, they are not the minority. There are lots of rarer things than that.

461 Q. Would you say there are three million five hundred thousand suffering from tuberculosis of the joints?

A. No.

Q. I am trying to get an estimate, Doctor, as compared to the other types of rheumatism and arthritis, if you can give it to us.

A. It depends on the clinic you are working on in the country, but in my experience the amount of tuberculis arthritis seen has been not uncommon, has been rather striking, and we would seek to avoid any trouble with it, you see.

Q. When you talk about tubercular arthritis, those people have tuberculosis, have they not, Doctor?

A. They have tuberculosis of the bones and joints.

Q. Tuberculosis as we understand it?

A. Yes.

Q. And that is the demonstrable entity that is causing it; is that not right, Doctor?

A. Yes, the cause of tuberculosis is known.

Mr. Gettleman: I believe that is all.

Mr. Callaway: No further direct.

Trial Examiner Lipscomb: Gentlemen, the hearing is adjourned to reconvene by agreement of counsel, at Cleveland, Ohio, on January 23, and thereafter to adjourn and reconvene here in Chicago on January 25.

(Whereupon, at 2:10 p. m., November 21, 1950, the hearing in the above-entitled matter was continued to January 23, 1951.)

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Room 410, Old Post Office,
Cleveland, Ohio,
January 22, 1951.

Met, pursuant to notice, at 10:10 a. m.

Before:

Abner E. Lipscomb, Trial Examiner.

Appearances:

Joseph Callaway, Attorney for the Federal Trade Commission.

Frank E. Gettleman, Attorney for the respondent Rhodes Pharmacal Company, Inc., et al. (10 South LaSalle Street, Chicago, Illinois.)

James B. Goding, Attorney for the respondent Rhodes Pharmacal Company, Inc., et al. (653 Washington Building, Washington, D. C.)

464 Proceedings.

Trial Examiner Lipscomb: The hearing will come to order.

The attorney supporting the complaint may call his first witness.

Mr. Callaway: I would like to offer Dr. Wolpaw as a witness.

DR. RALPH WOLPAW, was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

Direct Examination by Mr. Callaway.

Q. Your name is Ralph Wolpaw?
A. Yes.
Q. Are you a practicing physician, Doctor?
A. Yes, I am.
Q. Located here in Cleveland?
A. Yes.
Q. Where is your office here in Cleveland?
A. 2010 East 102nd Street.
Q. Doctor, you are being offered here as an expert witness, and the value to be given the testimony of an expert depends somewhat upon his qualifications as an expert. I wish you would, therefore, outline for us something of
465 your training and experience.

Let's start off with the degrees that you have received, both academic and medicine.

A. I have my A. B., 1934; M. D. from Western Reserve University School of Medicine, 1937. I had following that a year of internship and a year of residency in pathology, and a year of residency in medicine at Mount Sinai Hospital in Cleveland, and then six months of assistant resident in pulmonary disease, and six months as an assistant resident in medicine at Montefiore Hospital for chronic diseases in New York. Following which I entered the Army in 1941, and from 1941 to 1944—in November 1944 I was at Stark General Hospital, Charleston, South Carolina, during which I was Chief of the section of arthritis, and during that entire period I was also Chief of the Allergy and Metabolic Disease Section from 1943 until the end of that period. I was Assistant Chief of the Medical Service from March of 1944 until November of 1944.

I was then attached to the 120th Evacuation Hospital serving in England, France and Germany until July of 1945, and my position with that outfit was Ward Officer in charge of a large medical ward, and also Sanitary Officer.

I was mustered out of the Army in December of 1945, and since then I have been in practice in Cleveland limiting my practice to arthritic and rheumatic diseases.

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466 I am in charge of the Arthritis Clinic at Mount Sinai Hospital, and I am a visiting physician in the Arthritis Clinic at City Hospital. I am attending physician at the Veterans' Hospital out in Parma, and am also considered the arthritis consultant at the Veterans' Hospital.

Q. Let's see, Doctor. Have you done any teaching since you entered medicine?

A. Yes. I am doing some teaching now at Mount Sinai Hospital of medical students, and I have done teaching in the past both at Mount Sinai Hospital and at the Crile Veterans' Hospital, and, of course, prior to going into the Army I did some teaching when I was in New York.

Q. What about participation in and direction of clinics at the hospitals?

A. I am in charge of the Arthritis Clinic of Mount Sinai Hospital. I also am in charge of the Medical Clinic one day a week there, and I visit—I am one of the attending physicians or visiting physicians in the Arthritis Clinic at City Hospital.

Q. What about participation in seminars and symposiums on arthritis and rheumatism?

A. Well, I have done practically nothing but the treatment of arthritis and rheumatism for the last—well, since I got out of the Army which was in late 1945, it is something over five years, and in that time I have participated in
467 a number of scientific meetings and symposia and group discussions of arthritis and rheumatic diseases. I presented a discussion of rheumatoid arthritis and arthritis in general before the Mount Sinai Medical Society early in 1946. I spoke to the Medina County Medical Society in September of 1946, and, I believe in 1947 to the Mount Sinai Medical Society on the use of gold in rheumatoid arthritis, and in 1949 there was a symposium on low back pain in Mount Sinai Hospital.

There was a teaching session at the Ohio State Medical Association in about April of 1949 in which we discussed rheumatoid arthritis, and then with Drs. Stecher and Solomon, we presented a paper at the International Congress on rheumatic diseases in June of 1949.

We also had an exhibit that year at the American Medical Association on a phase of rheumatic disease, Heberden's Nodes.

We had an exhibit in the Ohio State Medical Association

meeting in 1950 in Cleveland on Heberden's Nodes. I have made a movie on the use of—or the effects—

Q. Excuse me. These Heberden's Nodes that you are talking about, they are one of the manifestations of arthritis?

A. That's right. They are a form of arthritis of the hand.

Last year, that is, 1950, I made a movie of the effects of cortisone on patients with rheumatoid arthritis, and
468 that movie was presented to the Arthritis and Rheumatism Foundation, Cleveland Chapter, in September. It was also presented to the American—I don't even think I have that listed there—American Society of Physical Therapists, I believe that is the name, in June of 1950.

Q. Doctor, what scientific and medical societies do you belong to?

A. Well, I am a Fellow of the American College of Physicians; a member of the Ohio State Medical Association; member of the Academy of Medicine of Cleveland; I am a member of the American Rheumatism Association; a Fellow of the American College of Physicians; a member of the American Psychosomatic Society; a member of the International League Against Rheumatism; a member of the Mount Sinai Medical Society.

Offhand I think that is about it.

Q. Are you a Diplomate of the American Board of Internal Medicine?

A. Yes. I am a Diplomate of the American Board of Internal Medicine.

Q. Just what does that mean? What is the purpose of the American Board of Internal Medicine? What is the significance of a certification as a Diplomate?

A. The American Board of Internal Medicine was set up by the American College of Physicians by a group of senior internists in the United States in 1936, I be-
469 lieve, to certify men who are specializing in diagnosis and treatment of internal diseases, and they require that the man have a certain amount of training in hospitals prior to his being allowed to take the examination. This training usually involves a minimum of four years in hospitals, and he must also have at least two years in practice limited entirely to internal disease.

Q. Let me ask you this: Arthritis and rheumatism come under the heading of internal medicine, is that right?

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A. Yes. It is considered part of the internist's or diagnostician's practice, and there are two examinations, one is a written examination following which, if it is passed, the applicant is allowed to take on oral examination, and there is usually an interval of a year or so—almost the earliest a man may become certified by this Board is seven to eight years after he is out of medical school.

Q. In other words, a doctor is a specialist, and this is a specialist among specialists, you might say, a Diplomate of the Board of Internal Medicine?

A. Well, the significance of the Boards is becoming much more important. Nowadays, the hospitals are beginning to limit their doctors in the amount of work they can do unless they are certified by these Specialty Boards.

Q. Let's see, Doctor: Are you also a member of the American College of Physicians and Surgeons? I 470 believe you mentioned that.

A. I am a Fellow of the American College of Physicians.

Q. Doctor, have you written and had published any scientific papers?

A. Yes. There have been a number of papers that I have written either alone or in collaboration.

Q. Do you have a list of them?

A. Yes, I have. This includes all the meetings, and so on. There are several others that are in the process of being prepared at the present time. Do you want me to—

Q. I am wondering if it would be all right for the reporter to copy this into the record at this time.

Mr. Gettleman: May I look at it?

Mr. Callaway: Oh, yes.

Mr. Gettleman: Off the record?

Trial Examiner Lipscomb: Off the record.

(Discussion off the record.)

Trial Examiner Lipscomb: On the record.

By Mr. Callaway:

Q. Doctor, will you tell us what scientific papers you have written and had published? You can refer to the paper which you have in your hand.

Mr. Gettleman: I will object to that, if the Examiner please. That is not the proper way to have that presented. I will object to it.

471 Trial Examiner Lipscomb: Do you need to refer to the instrument, Doctor, to refresh your memory?

The Witness: The only question in my mind is: Do you want all the papers that were written?

He brought up the point off the record that there are several papers that have no relation to rheumatic diseases.

By Mr. Callaway:

Q. But all the papers you have written are part of the training of a medical man, I take it?

A. Well, I don't have to refresh my memory. I will put it away, if you wish.

Q. All right.

A. There is a paper on the treatment of acute mercury poisoning with a review of twenty cases.

Q. When was that published?

A. That was published in 1942.

Q. Where?

A. In the Annals of Internal Medicine.

There is a treatment on the—no, I beg your pardon, that wasn't the Annals of Internal Medicine—that was the Journal of Laboratory and Clinical Medicine.

There is a paper on the treatment of nitro-benzine poisoning that was published in the Annals of Internal Medicine in 1944.

There is a paper on the tetralogy of fallot with
472 termination by brain abscess published in the Journal of Pediatrics in 1946.

There is a paper on Heredity in Ankylosing Spondylitis which was delivered at the International Congress on rheumatic disease, and will be published in the proceedings of that meeting, and was published in the Annals of Rheumatic Disease which is a British journal.

Q. Is ankylosing spondylitis a form of arthritis?

A. Yes, it is. There is a paper on heredity in spondylitis and the genetics of spondylitis which is to be published in the American Journal of Human Genetics, and there is another paper on heredity and rheumatoid arthritis which is also to be published—I don't know exactly what journal it will be in, as yet. There is an article on the use of ACTH and cortisone which will be published in the Cleveland Heart Bulletin. It is in the process of being published right now.

At the moment, I don't recall any others.

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Q. Would you care to look at the paper to refresh your memory?

A. Yes, if I may.

Q. Oh, yes.

Trial Examiner Lipscomb: Yes.

A. I don't think there are any more.

Mr. Goding: Before the good doctor goes any further, I think probably that the answer with respect to these last three papers, that is, those which are to be published, 473 I think they have no place in his answer to the question. As I understand it, the question is: What has been published.

Mr. Callaway: Well, if that is to be your stand, I want to enlarge my question to include these papers that are to be published, then.

Trial Examiner Lipscomb: You may refresh your recollection, Doctor.

The Witness: Thank you.

No, I believe that is all.

Mr. Callaway: All right, Doctor. Thank you.

Mr. Goding: Excuse me, Mr. Callaway. I don't want to get into any extended discussion about this, but the point I seek to make is that we don't know to what extent these papers have been written. We don't know anything about them. I am talking about the ones which have been referred to as those which will be published. I still think that the answer to that extent is unresponsive.

Mr. Gettleman: That is right.

Mr. Callaway: Let me ask you this: Do you mean to say that you are wondering whether or not he is just thinking of writing such an article or articles?

Mr. Gettleman: No, no.

Mr. Goding: There may have been talks.

Mr. Gettleman: Until they are published they are not written.

474 By Mr. Callaway:

Q. Are such papers as you have mentioned that have not yet been published, have they been written and sent for publication?

A. Yes, except for one of them. The last one has not been accepted, as far as I know. It has not been accepted. That is the one on heredity. We just have the—as a matter of fact, I just received the final copy with all our tables,

and so on, in it, a few days ago. That is why it isn't even included in this list.

Mr. Goding: Is that the heredity on spondylitis and genetics?

The Witness: No. There is one on heredity. This is heredity in rheumatoid arthritis.

By Mr. Callaway:

Q. I don't believe you mentioned that one.

A. Yes, I mentioned it, but I said that is to be published I don't know exactly where.

Q. All the others that you have mentioned except that one have been accepted for publication?

A. That's right. They are in the process of being published now. As a matter of fact, they may be out already, I don't know.

Q. Doctor, do I understand from what you said that a large portion of your medical life has been spent in the
475 study and treatment of rheumatic and arthritic conditions?

A. Yes, that is true.

Q. Could you give us any idea, Doctor, of the number of folks or the percentage of the population in this country that are afflicted by these conditions?

A. Well, the Public Health Reports say about seven and a half million. Those are relatively old reports, and they are certainly on the conservative side.

Q. Doctor, how do arthritic and rheumatic conditions range among major causes of illness in this country?

A. I believe it is one of the major causes of illness.

Q. Doctor, in your private practice and in the hospitals with which you are associated, and at the various clinics which you attend, have you seen and treated many patients suffering with osteoarthritis?

A. Yes, I have.

Q. Rheumatoid arthritis?

A. Yes.

Q. Infectious arthritis?

A. Yes.

Q. Gout?

A. Yes.

Q. And other rheumatic diseases including fibrositis?

A. Yes.

Q. Bursitis?

476 A. Yes.

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Q. Neuralgia?
A. Yes.
Q. Neuritis?
A. Yes.
Q. And sciatica?
A. Yes.
Q. Doctor, have you also in your private practice and in your hospital connections and in clinics which you have attended followed the course of these various diseases and disorders including their complications?
A. Yes, I have.
Q. Doctor, have you had occasion to conduct studies and research clinically, that is, with human patients, in the field of rheumatic and arthritic conditions?
A. Yes, I have.
Q. Tell us something about the breadth and scope of your work in this field, if you will, please, sir?
A. Some of the work has already been covered in the papers that I have spoken about and in some of the addresses, and so on, but we have done additional work which has not been published which we have records of, of course, at my clinic, at the Mount Sinai Hospital.
We have done work with the use of gold salts in the treatment of rheumatoid arthritis, and controlled it
477 with an unknown substance, that is, that was not gold, just to be sure just exactly how much good it was.
We have done the same thing in City Hospital for a period of about two years, and that work has not been published because we felt there were enough publications on it, but it was carefully controlled work, which I don't believe has been done too often on the effectiveness of gold as compared to an unknown substance given at the same time.
Q. You have also worked with cortisone and ACTH, have you not?
A. Yes. We have done considerable work both at City Hospital and I have done some at Mount Sinai Hospital with cortisone and ACTH, a lot of which has gone into the making of the movie with the original patients we did make a movie with, and I am continuing to work with them and have continued to work with them.
Q. Doctor, is there a disease known simply as arthritis?
A. No, there is no one disease known simply as arthritis. There are very many types of arthritis and each type

has some variations, and there can be a differentiation, and you cannot lump all the joint manifestations into a simple term of arthritis; it must be classified.

Q. Is there a disease known simply as rheumatism?

A. No. Rheumatism is an all inclusive term that covers a tremendous territory, any pain or ache will be classified as rheumatism in many cases.

478 Q. Doctor, what are some of the different kinds of arthritis? Could you tell us some of the different classifications?

A. Well, the major classification that most of us like to follow is that which originally, I think, was classified by Dawson in New York, and then has since been clarified a little bit by the committee from the American Rheumatism Association. There are various types of arthritis.

I believe we can start out with the ones that are on an infectious basis caused by perhaps gonococcus or tuberculosis, the tubercle bacillus, or pneumococcus, streptococcus, staphylococcus, and so on; that definitely caused by specific organisms.

Then there is the so-called rheumatoid type which is probably infectious, but we have never been able to find the specific organism, and that is probably one of the most serious types of arthritis. It has two forms: The type that affects the spine mainly, and the type that affects the joints of the arms and legs and shoulders.

Then there is so-called osteo-arthritis or degenerative joint disease or hypertrophic arthritis which is essentially what the term degenerative joint disease implies. It is a disease of aging parts, and it is really not an inflammatory process but it is a degenerative process.

There is also the arthritis that can follow injury, of a joint, or injury to a specific part.

Gout is a form of arthritis which we consider to be 479 a metabolic disease.

Then there are a large classification of types of arthritis such as intermittent hydrarthrosis of the knees, palindromic rheumatism, acute synovitis which is an inflammation of the knees, Charcot's joints, and we can go into the muscle diseases affecting muscles and joints such as fibrositis. Then there are a certain number of—

Q. Bursitis, neuralgia, neuritis and sciatica come under that group?

A. Yes, but, of course, each of those is due to a number of causes, also. There are a number of other associated

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diseases which will give arthritic, that is, joint manifestations such as tumors or occasionally can give severe joint manifestations. Paget's Disease, which is a disease of bone, can give joint pains. Undulant fever can give severe joint pains. Dengue which is, of course, a tropical disease, can give severe joint and back pains and without any actual joint involvement in the sense that some of these other cases are involved.

Q. Now, Doctor, are the various kinds of arthritis and rheumatism you have mentioned characterized by the same pathological changes or not?

A. No, they are not characterized by the same pathological changes. By pathological change I mean that there may be an actual change in the tissues about the joint
480 which is not normal, something that is wrong with the circulation or with something else around the joint, or in the area of the joint.

Some of the diseases have no pathological change that we can find. Such things as palindromic rheumatism have no pathological change that we can discover even during essentially the period of involvement, whereas others, such as rheumatoidal arthritis and the infectious arthritis have very severe changes at times.

So that there is a great variation from disease to disease, depending on the cause and depending on the degree.

Q. Doctor, are the various kinds of arthritis and rheumatism characterized by the same progress and the same development?

A. No, they are not. Some of them will go faster and some will go slower, and some will be self-limited in the sense that the patient will get well no matter what is done, and in others the patient will become progressively worse and will go on to complete crippling.

Q. Are these various kinds of arthritis and rheumatism characterized by the same manifestations?

A. No, they are not. Some are much more severe than others. Some have an entirely different picture presented.

Q. Doctor, do the various kinds of arthritis and rheumatism respond to the same form of treatment?

481 A. No, they do not. There is no one specific form of treatment. It depends entirely upon the diagnosis of the disease, and—

Q. Before we get any further,—what does the word "treatment" mean in the sense that you are using it?

Mr. Gettleman: *If* the Examiner please, I want to object to that question and the one prior to that for this reason: That we have gone through the reasons in detail about the advertisements stating anything about treatment for these conditions. We maintained throughout—Shall I stand up, Judge?

Trial Examiner Lipscomb: No.

Mr. Gettleman: We have maintained throughout that our product is used and sold as an analgesic for the relief of pain, nothing further than that, and I submit that anything within the realm of treatment wherein we name something synonymous with curative powers is objectionable. I don't think it is germane to the issues here, whatsoever.

Mr. Callaway: Well, of course, your Honor, the complaint alleges that the respondent has represented their preparation to be a cure and a treatment for these various forms of arthritis and rheumatism, and the respondent has denied that. It is one of the issues in the case. Now, if he wants to admit that it is not a treatment for arthritis or rheumatism, why, then, we can eliminate a good deal,
482 but we asked him to admit that once before and he doesn't see fit to do so, so I see no route to go except the way I am going.

Mr. Gettleman: If the Examiner please, may I say that this has been gone into in detail. The mere fact that the complaint states as a conclusion that we say in our advertisements that it is a treatment doesn't alter the situation. In other words, the complaint is a very good example of stating everything by way of conclusion. That doesn't mean that everything that they claim or allege by conclusion is germane to the issues. I submit that is manifestly unfair. It is not the way pleadings should be drawn.

Mr. Callaway: Well, your Honor, of course, as to what conclusions you will reach as to what they have represented is something that you are not called upon to answer right now. I think after careful consideration of the advertising, your Honor, you will undoubtedly come to the conclusion that they have represented it as a cure and a treatment, and if they have, then this question will be pertinent. The only way that he seeks to have us do it is to try the case piecemeal and have you determine, first, what they represented and then direct our medical testimony to

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that, and I don't think that is the way the Federal Trade Commission proceedings are tried, as a rule.

Mr. Gettleman: On the contrary, if the Examiner
483 please, it is not only objectionable because it is a mere conclusion, but it also called for the ultimate decision that you are to make in this case, and we are all familiar with the Spaulding case which just prevents a situation like that.

The doctor here is called upon to give us his decision as to what the Trial Examiner is to ultimately decide.

Mr. Callaway: No, no. I am not asking him to do that.

Trial Examiner Lipscomb: The objection is overruled. You may proceed.

Mr. Gettleman: Exception.

Q. Now, Doctor, the last question, I believe you were talking about whether or not the various kinds of arthritis and rheumatism respond to the same form of treatment, and I asked you in that connection what the word "treatment" included in your answer which you were giving.

A. Treatment includes an entire course of events that must be followed in order to properly handle the disease in the patient. That applies not only to rheumatic disease or arthritis in its various forms, but also to practically almost any disease existing today.

There are very few specifics. By that I mean drugs that given alone would cure patients. Many other measures must be used in order to relieve and cure patients
484 insofar as possible, and that is particularly true of the arthritic diseases where a regular program must be worked out with the patient in order to obtain the best results, and this would include medications of various sorts, exercises, massage, heat in one form or another, rest in regulated amounts, good dietary control—by that I mean an adequate diet rather than any special diet, vitamins of one sort or another, and any of the adjunct medications such as gold, which I have already mentioned, cortisone and ACTH, and in cases of infectious arthritis, the antibiotics such as penicillin or aureomycin, and so forth.

Q. This may be repeating a little bit, but just to get it clear: Is there a single drug or combination of drugs which constitutes an adequate, effective or reliable treatment of the various kinds of arthritis, rheumatism, and related conditions?

A. No, there is no single drug or combination of drugs.

Q. Doctor, have you had any experience in treating patients suffering from arthritic conditions with Imdrin?

A. I have.

Q. When a patient complains of arthritis or rheumatism what must be determined first before adequate and effective treatment can be given?

A. I think the most important part is to determine exactly what type of arthritis or rheumatism the patient has, if any.

485 Q. What would be, say, the first step in making that diagnosis?

A. The first step is to take a very complete history which would include the entire history of the present illness of the patient, the date of onset, what symptoms were manifested first, whether they were worse at night or during the day, whether they were affected by weather, what medications, if any, had any effect, what had been used in treatment in the past, and everything actually relating to the illness of the patient.

In addition to that, a very careful family history would be obtained because we have in some of the work we have done, gone into that to a certain extent to discover what relationship there is to heredity, and so on, in these families, and it would sometimes be a great help particularly in gout which is a hereditary disease, to determine the diagnosis.

We would then go into an environmental history to determine whether any of the things the patient does either at home or at work should be of value in determining what the diagnosis was; whether there are any fractures or injury; we would discuss whether the patient had had previous operations, injuries or serious illnesses which might have affected the disease. We would go into the emotional background to see whether there might not

486 be some emotional factors that could be affecting the patient or causing him to have the trouble about which he was complaining.

Q. Would all of those things or might all of those things that you have stated that you would inquire, might they all have a bearing on the diagnosis in this case?

Mr. Gettleman: Just a minute. I have a continuing objection to this line of questioning, if the Examiner please?

Trial Examiner Lipscomb: You may have.

Mr. Gettleman: Thank you.

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A. All of those things, I believe, would have a very definite effect, because, as I mentioned, there are types of arthritis which can be caused by injury of one sort or another, another are, and we have seen, types of arthritis or so-called arthritis which can be caused by environmental changes; there is a disease called welder's disease which has all the signs and symptoms of rheumatic fever or joint manifestation, and yet it is caused by the inhalation of the zinc fumes during welding, and if you don't know the history, you would almost certainly make a diagnosis of some sort of rheumatism in these cases, and so that the industrial history or work history is very important.

The family history is important in the same sense that, for example, if the gout is a hereditary or familial disease. In gout, also, the disease is rather uncommon in women, so that if you had a woman, it would be a little less likely that she had that disease.

487 If there are other members of the family that had a similar disease, it would make you more inclined to think that it would be that disease. As far as the history of the type of pain and whether the patient was exposed, or not, and so on, that would help make a diagnosis of one sort of arthritis or another.

Q. Doctor, after taking the patient's history, what would you do next?

A. My practice is to do a very complete physical examination after taking a complete history, and this would include the entire body from the skin and everything else that we would include. We start with the skin, examine the head, eyes, ears, nose, throat, mouth, tongue, neck, lungs, heart, take a blood pressure, examine the abdomen very carefully feeling for any masses or any tenderness or any involvement in that area, examine the back, examine the genitalia, very carefully, because certain types of arthritis such as acromegalic arthritis can be related to general changes, and examine the rectum, and then we go over all the joints very carefully, the extremities, do a neurological examination which would include, of course, reflex changes and sensory changes, fluoroscope the patient, usually attempt to see as many of certain joints as I can under the fluoroscope, and do studies of the walking habits, the ability to sit and stand, and the ability to balance and—in other words, I am going through it in some detail because when I say complete examination, that would

vary from individual to inividual, but this is a very
488 complete examination which involves a considerable expenditure of time and involves a lot.

Q. Why do you think that such a physical examination as that is necessary if a patient comes to you complaining of arthritis or rheumatism?

A. Because many types of arthritis or joint pain can be caused by so-called systemic diseases, diseases other than just a joint pain. You cannot limit your examination to the joint involved, because even rheumatoid arthritis, which is one of the most serious, is a systemic disease. It may involve only one joint, but the patient may have other manifestations such as weakness, loss of muscle tone, and a general rundown condition, and that doesn't apply only to rheumatoid arthritis, but applies to any of these other diseases, and, of course, tumors and other various things can cause bone manifestations or can cause joint manifestations without the joint manifestations being anything other than secondary changes.

Q. Now, Doctor, after the physical examination, what is the next step in the diagnosis?

A. I perform any special laboratory tests that I feel might be of value. They would include routinely a urinalysis because, of course, that gives us a good idea of whether there is any severe toxic process going on, whether the patient has diabetes or not, whether there is a possibility of nephritis, and so on, and then usually a complete blood count is done, and a sedimentation rate will be taken,
489 and then any special study such as serum uric acid determination in cases of suspected gout, blood cultures in cases of feeling that there is an infection involved, sometimes a joint tap is done and fluid removed from the joint, cultured, and examined under the microscope to determine whether there is any infection or exactly what type of process is going on in there.

Occasionally biopsy is performed. By that I mean taking a small piece of tissue and examining it under the microscope to determine exactly what sort of disease process is occurring.

Q. Those steps which you have mentioned, as I understand it, then would be the basis for a diagnosis, is that correct?

A. Yes, those taken altogether would, I believe, be a basis in most cases for a diagnosis. Sometimes further

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investigation and observation will be necessary, but in most cases that would be adequate for making a diagnosis.

Q. Doctor, what may be the consequences of delay in instituting adequate and effective treatment of a person afflicted with some form of arthritis?

Mr. Gettleman: If the Trial Examiner please, I will object to that question unless it is more specific. By virtue of what the doctor said, there are countless variations and forms of bone and joint conditions. He also said there were some that were self limited, some got
490 better without doing anything, and he went into lengthy detail to talk about the variations. I submit that that question is entirely too broad.

Mr. Callaway: Wait a minute. I don't mean to ask too broad a question. I am limiting it to some forms of arthritis, and if he wants me to, I can ask him. I thought if I would particularize more, why, Mr. Gettleman might call it a leading question, but I will particularize a little bit more if he wants me to.

Mr. Gettleman: I also object to that question, if the Trial Examiner please, on this ground: That it is not germane to the issues. Not even the complaint refers to those conditions, and I submit that all that is being sold here is a combination of established ingredients used for analgesic purposes only, and we have absolutely no question involved as to what might occur in some case or other if certain time intervenes. I don't think that is germane to these issues, if the Trial Examiner please.

Trial Examiner Lipscomb: The question is permitted.

Mr. Gettleman: Exception, if the Examiner please.

A. The result of delay in treatment of certain types of these diseases can be very serious. For example, if the arthritis, so-called, is the result of a tumor, any delay might be extremely serious in the sense that the patient
491 might die a lot sooner than they might otherwise. If there is an infectious disease involved such as gonorrhea or tuberculosis or any of the other infectious diseases such as pneumonia or streptococcus, serious and irrevocable damage to the joint involved might be done, if treatment were delayed even a little.

Q. When you say "even a little" what length of time would you say might cause irrevocable damage?

A. A matter of even days.

Mr. Goding: I am going to object to that, if it please

the Examiner. We are talking, I think, altogether too generally. We are now confronted with a very dramatic situation which I think actually, as Mr Gettleman argued, is not germane to the issue. More specifically, in connection with the pending question, when the doctor was asked as to how long a little time might mean, I think that itself demonstrates the point that we seek to make. We are going to get involved in certain cases where there might be a delay in proper medical treatment of real disease conditions. That is the sort of thing, I repeat, which is not—it just isn't pertinent to the issues which are raised by the pleadings. The issues raised by the pleadings are first: Whether the representations that are made actually mean what the Commission men claim they mean, and, second, whether those representations are false and misleading.

All this is entirely irrelevant, and we could spend days cross-examining in specific cases on delays and all
492 that sort of thing and we would get nowhere.

Mr. Callaway: I am not going any further along that line.

Mr. Goding: In that connection, I move that the question and answer be stricken, in fact, that this whole line of inquiry be stricken because it is, again, not germane to the issues raised by the pleadings.

Mr. Callaway: I think it hits them where it hurts.

Mr. Gettleman: Nothing hits where anything hurts. It is just unfair because you are taking a few isolated obvious cases, those in which pneumonia is involved, tumors are involved, and the ordinary person—anybody suffering from that type of illness will immediately go in and see a doctor. The question there is not: Will he treat his own pain; there he knows he has got something else wrong with him, or should know. It is not a question of treating pain.

I submit, if the Trial Examiner pleases, the issues here are very simple. They are succinct and clear. The question is whether or not this advertising is true or false, basically, and whether or not anybody would hurt themselves under rare conditions by—well, that is far afield of that which is involved herein. The only question involved in this case is one of pain. That is what Imdrin is being sold for, to relieve pain and there is no question in-
493 volved here as to what would happen if somebody

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waited for some given length of time under some strange circumstances in some cases that we know nothing about.

I submit it is manifestly unfair and far afield, and for that reason should be stricken and not gone into.

Trial Examiner Lipscomb: Motion to strike is denied.

Mr. Gettleman: Exception.

By Mr. Callaway:

Q. Doctor, what is sciatica?

A. Sciatica is a syndrome of pain along the sciatic nerve. By that I mean, that there can be a number of causes, so that sciatica alone is not really a diagnosis, it is merely a symptom of some underlying disease.

Q. Would each of the causes of sciatica require essentially a different kind of treatment?

Mr. Gettleman: I will object to that question, if the Examiner please. He didn't go into the question of causes. It is a leading question.

Mr. Callaway: He said it may be from several different causes.

Mr. Gettleman: Let him explain it.

By Mr. Callaway:

Q. All right, explain it, then, Doctor.

A. Well, there are a number of things that could
494 cause sciatica. Probably the most common cause of sciatica is what we call a herniated nucleus pulposus, which means that one of the cushions between the vertebrae is pushed out so that it presses on the sciatic nerve or the nerves making up the sciatic nerve, and causes pain along that nerve.

In addition to that, there are a number of other causes of sciatic pains such as arthritis involving the sacroiliac joint, a tumor in the spinal cord which could also be pressing in that area, simple toxic factors such as definite poisons which would cause—which could cause it, and sometimes factors about which we know nothing could cause this severe pain along the sciatic nerve; straining of one sort or another can sometimes cause pain in this area; diabetes can sometimes cause a neuritis of the sciatic nerve which would give sciatic pain; and in many cases inflammation of muscles in the lower back or some of the ligaments can give severe sciatic pain.

Q. You have named different causes of sciatica. Would

each of the causes mentioned require essentially a different kind of treatment?

Mr. Gettleman: If the Trial Examiner please, I will object again to these questions and this line of questioning because it is not germane to the issues, it is not a part of the issues in this case. Again we say that all we are
495 concerned here with is a question of pain and whether the advertisements are true or false, and not with any causes of any diseases.

Trial Examiner Lipscomb: Objection is overruled.

By Mr. Callaway:

Q. Will you answer the question, Doctor? Do you remember the question?

A. Yes, I do.

The causes would require essentially different types of therapy. There might be overlapping in the sense that some of the routine might be the same, but there is no one specific type of therapy for all these causes.

Q. Doctor, is there any drug or combination of drugs which can restore to normal all the pathological changes that may occur in and may give rise to sciatica?

Mr. Gettleman: Objection to that question, if the Trial Examiner please, for the reasons previously stated.

Trial Examiner Lipscomb: Objection is overruled.

Mr. Gettleman: Exception.

A. There is no single drug or combination of drugs which will alleviate, and I specifically don't say cure the condition.

Mr. Goding: Will you read that answer, please?

(Answer read by reporter.)

Q. Doctor, what is the predominant symptom of sciatica?

496 A. The predominant symptom of sciatica is pain along the course of the sciatic nerve which is in the back part of the leg and thigh.

Q. Doctor, have you seen the formula for the product called Imdrin, and the directions for the use as set forth in the complaint in this case?

A. Yes, I have.

Q. In your opinion, what effect would Imdrin taken as directed have on the pain of sciatica?

Mr. Gettleman: If the Trial Examiner please, I will object to that question. It is calling for the ultimate conclusion that you yourself are called upon to decide.

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Trial Examiner Lipscomb: Objection is overruled.

Mr. Gettleman: Exception.

A. If Imdrin were given as directed, it would have possibly slight effect on the pain of sciatica, that is, it might give some temporary and partial relief of the pain.

Q. Doctor, in your opinion, can Imdrin taken as directed be relied upon to usually or ordinarily relieve the pains of sciatica completely?

A. No.

Q. Doctor, suppose the dose of Imdrin were doubled, in your opinion, what effect would doubling the dosage of Imdrin have on the pain of sciatica?

497 Mr. Gettleman: If the Trial Examiner please, that question is objectionable. It calls upon the doctor to conjecture as to what a double dose would do or any other denomination of the dose. We are dealing with one dosage. A tablet of Imdrin has a certain composition. The directions are specific. I think the questions and answers should be limited to the product if taken according to the directions, not any less than the formula calls for, nor any more than the formula calls for, because I think it is basic and elementary that the deviation of many formulas, whether you give them more or less, might not be of any effect, or might be injurious, or might do something that we don't know. We have a formula here that we think and know is based upon certain facts, and that is the product that we are dispensing according to definite directions. I think that portion is manifestly objectionable.

Trial Examiner Lipscomb: Objection is overruled.

Mr. Gettleman: Exception.

Trial Examiner Lipscomb: Just a moment. We will have a five-minute recess.

(Short recess was taken.)

Trial Examiner Lipscomb: The hearing will come to order.

By Mr. Callaway:

498 Q. Doctor, before the recess I was asking you about? In your opinion, suppose the dose of Imdrin were doubled from that given in the directions, and in your opinion what effect would the doubling of a dose of Imdrin have on the effects of sciatica?

A. It would have little difference from what the orig-

inal dose would do. It might give slightly more relief, but the relief would only be partial at best, and would only be temporary.

Q. Doctor, what is neuritis?

A. Neuritis is an inflammation of a nerve.

Q. Doctor, what are some of the causes of neuritis?

Mr. Gettleman: Same objection, if the Trial Examiner please.

Trial Examiner Lipscomb: The objection is overruled.

Mr. Gettleman: Exception.

A. There are a number of types of neuritis. There are some due to infection which actually affects the nerve, toxic changes, diabetes frequently will cause a neuritis, tumors by pressure can cause neuritis symptoms, and pressure from muscles or from irritation of any sort, injury to a nerve, can all cause neuritis.

Q. Sciatica, is that a form of neuritis?

A. Sciatica is a form of neuritis, yes.

499 Q. The different causes of neuritis which you have mentioned, would each of them require essentially a different kind of treatment?

A. Yes, they would require differences in the treatment, although, as I said before, there might be some overlapping of the various types of treatment in the general program.

Q. Doctor, in your opinion, is there any drug or combination of drugs which can restore to normal the various pathological changes which may occur in neuritis?

Mr. Gettleman: Objection to that if the Examiner please.

Trial Examiner Lipscomb: Overruled.

Mr. Gettleman: Exception.

A. There is no drug or combination of drugs which can restore the pathological changes to normal in neuritis.

Q. In your opinion, Doctor, what is the predominant symptoms of neuritis?

A. Usually the predominant symptom of neuritis is pain, although there may be weakness, and even in some cases paralysis as the result of neuritis, but the usual symtom, the most prominent one, is the pain.

Q. Doctor, in your opinion, what effect would Imdrin taken as directed have on the pain of neuritis?

Mr. Gettleman: That is objectionable, if the Trial Examiner please, because it is calling for an answer re-
500 garding the ultimate issue in this case.

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Trial Examiner Lipscomb: Objection is overruled.

Mr. Gettleman: Exception.

A. Imdrin might give, in most cases, slight relief; in some cases no relief, and at best the relief would only be partial and would only be very temporary.

Q. Doctor, in your opinion, can Imdrin taken as directed be relied upon to usually or ordinarily relieve the pains of neuritis completely?

A. No, it would not relieve the pains completely. As a matter of fact, it might not relieve them at all.

Q. Doctor, suppose the dosage of Imdrin were doubled, in your opinion, what effect would Imdrin in double dosage have on the pain of neuritis?

Mr. Gettleman: Do I have a continuing objection to that line of questioning?

Trial Examiner Lipscomb: Yes.

Mr. Gettleman: Exception.

A. Doubling the dose would have essentially the same effect it had in sciatica in the sense that there might be slightly more relief, but again the relief would only be temporary and partial.

Q. What is neuralgia?

A. Neuralgia is a symptom complex which is somewhat similar to sciatica in the sense that it is not really a
501 disease itself, it is just more of a symptom, and its chief manifestation is pain of a shooting nature probably due to nerve irritation, but you don't specifically say that it is a neuritis. It is, I would say, a more popular term than neuritis. Probably in many cases it is a result of neuritis.

Q. In your opinion, what effect would Imdrin taken as directed have on the pains of neuralgia?

A. Again, there might be slight temporary and partial relief of pain.

Q. In your opinion, can Imdrin taken as directed be relied upon to usually or ordinarily relieve the pains of neuralgia completely?

Mr. Gettleman: Objection to that, if the Trial Examiner please. That is definitely leading. The proper way to ask that question is: What effect, if any, would it have? I submit that is highly leading. He has answered the question already. He said it gives temporary and partial relief, period.

Mr. Callaway: All right, I will withdraw it.

Q. Doctor, suppose the dosage of Imdrin were doubled, in your opinion, what effect would Imdrin in doubled dosage have on the pains of neuralgia?

A. It would still, probably in some cases, give slight, temporary and partial relief; in other cases it wouldn't
502 have any effect.

Q. Doctor, what is fibrositis?

A. Fibrositis is also an all-inclusive term which is becoming more and more accepted. It is a painful symptom complex involving the muscles, connective tissues, sometimes the skin, ligaments, tendons, and so on.

It is a disease which frequently follows exposure. It was seen very often during the war in soldiers. It involves the tissues around joints and between joints more than the joints specifically, but it is included in the rheumatic diseases, and I think is frequently diagnosed under the group of causes known as the arthrities.

Q. What is the predominant symptom of fibrositis?

A. The predominant symptom is probably pain and stiffness.

Q. In your opinion, what effect would Imdrin taken as directed have on the pains of fibrositis?

A. Imdrin taken as directed might have slight effect in causing partial and temporary relief, but my experience with fibrositis has been that practically no drug has very much effect.

Q. On the pain?

A. On the pain. It is a very stubborn disease. It is not a terribly serious one, but it is a terribly stubborn one, so I would say that in general Imdrin would probably be less effective in causing even temporary and par-
503 tial relief than it would in the other cases.

Q. Suppose the dosage of Imdrin were doubled, in your opinion what effect would Imdrin in double the dosage have on the pains of fibrositis?

A. It might have slightly more effect than in the regular dose, but the effect would still be temporary and partial.

Q. Doctor, what is bursitis?

A. Bursitis is an inflammation of a bursa, and there are a number of bursi in the body. I think the one that is most commonly referred to is the one in the shoulder, but there are bursi in practically all the joints of the extremities, including the hips, knees, around the heel, and so on, and

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these are sacs filled with a lubricating material, and they are set up to help the motion of muscles over the joints or tendons over the joints, and if they become inflamed, it is readily understandable that there will be considerable pain because it will be like rubbing sandpaper together.

Q. What are some of the causes of bursitis, Doctor?

A. Well, the most common cause is probably infection. The exact cause of the infection is frequently very obscure. Sometimes a remote infection such as an infection in a tooth or a boil will cause a bursitis. Sometimes actual local infection through some means or other may cause it, and then again an injury of one sort or another, strain, will cause an inflammatory reaction to be set up. Much more rarely, tumors and other things can occur in bursitis, but they are quite uncommon.

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Q. Doctor, would the pathological changes which occur in bursitis vary according to the cause?

Mr. Gettleman: Excuse me, our continuing objection is noted and exception thereto?

Trial Examiner Lipscomb: Yes.

Mr. Gettleman: Thank you.

A. Yes, the pathological changes would vary to a certain extent, but there is almost a limited degree to which it can vary. In some cases, you just get increased fluid; in some cases you get pus in there; in some cases you get calcium, fluid calcium, and in other cases you would just get a loss of fluid, so it would lose its lubricating action.

Q. Would each of the causes of bursitis that you have mentioned require essentially a different kind of treatment?

A. Yes, they would, but not to as great an extent as in some of the other diseases, that is, there would be much more overlapping in the bursitis than there is in the others because in many cases, it is very difficult to determine the cause and the treatment would follow essentially the same general lines.

Q. Doctor, would the time at which appropriate treatment was begun after the onset of bursitis have any effect on the final outcome of the patient's condition?

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A. I think the time of beginning treatment is very important, first, the earlier the better, because there can be permanent and serious results. The most common location for bursitis that is known to the general public is the shoulder, and the incidence of what we call frozen shoulder

or shoulders which can't be moved very much is quite high because of the fact that there has been considerable neglect of treatment.

If treatment is begun early, one can't necessarily prophesy that there will be a cure, but the results can be much better, and I have any number of patients who have very bad shoulders because of either bad treatment or treatment which was not begun soon enough, or improper treatment.

Q. Doctor, in your opinion is there any drug or combination of drugs which can restore to normal all of the various pathological changes that may occur in bursitis?

A. No, there is no one drug or combination that can do that.

Q. Doctor, in your opinion, what is the predominant symptom of bursitis?

A. Would you repeat that question, please?

Q. What, in your opinion, is the predominant symp-
506 tom of bursitis?

A. Well, the predominant symptoms are severe pain and considerable difficulty in moving the joint over which the bursitis is occurring.

Q. In your opinion, what effect would Imdrin taken as directed have on the pains of bursitis?

A. In my opinion, in most cases I don't think Imdrin taken as directed would have any effect.

Q. On the pain?

A. On the pain. In occasional cases it might have very slight, temporary and partial effect, but this is also a disease which is a very stubborn one, and it is a very severe type of pain, and a real bursitis requires pretty strenuous treatment.

Q. Doctor, suppose the dosage of Imdrin were doubled, in your opinion, what effect would Imdrin in double the dosage have on the pains of bursitis?

A. Well, it might give a few more cases slight, temporary and partial relief, but that would be all.

Q. Doctor, what is gout?

A. Without meaning to be facetious, I wish we knew, but it is a metabolic disease which is characterized by severe, acute pain, and swelling in various joints, most frequently the big toe region, and also usually an increase in the serum uric acid in the blood.

507 Now, these episodes of severe pain, swelling and tenderness occur at irregular intervals and are associated

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with strain of one sort and another, sometimes with a dietary indiscretion, with an illness, a surgical operation, a long automobile trip, sometimes for no apparent reason. That is what is known as acute gout. It is a disease which is more or less self limited in the sense that if left alone it will subside in a few days to perhaps a week or so, but it goes on into a chronic form where the joint remains involved and painful and swollen and serious. It also goes on to the point where there is kidney involvement, possibly heart involvement, and it can be a very serious and crippling disease.

Now, in the acute episodes, it is the only disease that I know of that can look so bad that it almost appears as if a joint were going to burst, it is so red and swollen and painful, and yet within a relatively short time can return to normal so that you can never tell that anything was wrong with that joint.

Q. You have told us, I believe, something of the pathological changes which may occur in gout, have you not?

A. Well, in the sense that in chronic gout, of course, there are definite changes in the bones that can be seen in X-ray. There are so-called arthritic changes. There is an overgrowth of bone. There is a loss of substance of
508 bone. It is replaced by urate salts, and there is sometimes actually a severe destruction of the joint. Now, that is in chronic.

In acute gout there may be absolutely no pathological changes that can be determined immediately except for the ones that you see on the outside.

Q. In your opinion, is there any drug or combination of drugs which can restore to normal the structures that may be damaged in gout?

A. Well, there is one drug that we use for the management of acute episodes of gout. Now, I specifically say acute because it is only really effective in acute gout. It does nothing toward curing the patient. It merely gives relief of the immediate effects, and that particular drug is colchicine.

Mr. Gettleman: If the Trial Examiner please, that answer is completely unresponsive to the question. I move that it be stricken. The part about pathological changes—

Mr. Callaway: I believe that the answer is unresponsive.

Trial Examiner Lipscomb: The motion to strike is sustained.

Q. If I understand you correctly, most of the pathological changes occur in chronic gout?

509 A. That is right.

Q. It is observed, at least, in chronic gout.

Is there any drug or combination of drugs that can restore to normal the structures that are damaged in chronic gout?

A. No, there is no drug or combination of drugs.

Q. Doctor, in your opinion, what is the predominant symptom of gout?

A. Depending on what type of gout: in acute gout it is pain; in chronic gout it is pain and stiffness and disability.

Q. In your opinion, what effect would Imdrin taken as directed have on the pain of gout?

A. It might have slight effect on the pain, but the effect would only be very temporary and really very partial. I mean it wouldn't have much effect at all.

Q. Doctor, suppose the dosage of Imdrin were doubled, in your opinion, what effect would Imdrin in double dosage have on the pain found in gout?

A. It might have slightly more effect in the sense that there might be a little more relief, but it would still only be temporary and partial.

Q. Doctor, what is osteo-arthritis?

A. Osteo-arthritis is the arthritis of old age. It is a degenerative process in the bones affecting particularly

510 the spine, but also all other joints, and it is a normal aging process that goes on.

Q. Does osteo-arthritis present various clinical stages in the course of the disease?

A. Yes. Patients will complain of pain and stiffness in various joints, and as nearly as we can determine, this pain and stiffness is due to the changes resulting from the osteo-arthritis, but there are a great many people who have osteo-arthritis who have no trouble. In other words, if we took X-rays we would see it, and yet they don't have to complain of anything.

Q. Would the different clinical stages of this disease require essentially different kinds of treatment?

A. Well, at times it wouldn't require any treatment, and of course, if the patient were complaining, there would have to be a definite program set up which might vary according to the exact stage of the disease or exactly what the complaints were.

Q. Could you tell us a little more—I think you mentioned it once, but I would like for you to discuss it more fully, if you would like to, as to what are the pathological changes which occur in osteo-arthritis.

A. The changes are thinning of the cartilage that lines the joint space which is, as I say, a degenerative change,
and possibly an overgrowth of bone along the edges
511 of the joint to form sort of spurs, and this is, as I say,
in response to an aging process.

Q. Doctor, in your opinion, is there any drug or combination of drugs that can restore to normal the structures that are damaged in osteo-arthritis?

A. No, there is no single drug or combination of drugs.

Q. What are some of the symptoms of osteo-arthritis, Doctor?

A. The symptoms are usually pain and stiffness.

Q. In your opinion, what effect would Imdrin if taken as directed, have on the pain of osteo-arthritis?

A. There might be temporary and partial relief of some of the symptoms in some cases.

Q. You mean some of the pain?

A. Yes.

Q. Suppose the dosage of Imdrin were doubled, and in your opinion, what effect would Imdrin in double the dosage have on the pain of osteo-arthritis?

A. It might have slightly more effect than in the standard dose, but the effect would still only be a temporary and partial one.

Q. Doctor, what is rheumatoid arthritis?

A. Rheumatoid arthritis is a severe progressive disease involving the muscles, nerves, tissues around joints and
joints, which goes on, if untreated ordinarily, to seri-
512 ous crippling effects.

Q. Doctor, what are some of the pathological changes which occur in rheumatoid arthritis?

A. The major pathological change is in the joints. There is a destruction of the lining of the joints, and a destruction of the cartilage lining it, and ultimately either a fusion or dislocation of the bones, or marked deformity and lack of ability to use it as a result.

There are also changes in the muscles or nerves. There is wasting of muscles and involvement of nerves, and even circulatory changes, involvement of blood vessels, but this is not a disease primarily of joints alone, but it is a disease of the entire body.

Q. A systemic disease?

A. It is a systemic disease.

Q. Do patients with rheumatoid arthritis quite frequently also have an anemia?

Mr. Gettleman: If the Trial Examiner pleases, I submit that that question is improper, it is strictly leading, and he is asking him about the various manifestations and he should answer about those syndromes or those conditions that exist without being led.

Mr. Callaway: I will withdraw it. I suspect he is right about it.

Q. Doctor, in your opinion, is there any drug or
513 combination of drugs which can restore to normal all the destructive changes which can occur in rheumatoid arthritis?

A. No, there is no drug or combination of drugs.

Q. Is the cause of rheumatoid arthritis known?

A. No, the cause is not known.

Q. What are some of the symptoms of rheumatoid arthritis, Doctor?

A. The symptoms are pain, stiffness, weakness, difficulty in walking and performing normal activities, a general feeling of not being well, and—I think the other things would be considered under signs, and, of course, under signs there would be swelling and tenderness of the joints, and loss of weight, and appearance of muscle atrophy or muscle wasting, and in some cases, paleness, and a general appearance of debility.

Q. In your opinion, what effect would Imdrin, if taken as directed, have on the pain of rheumatoid arthritis?

A. There might be slight, temporary and partial relief of pain in some cases, but I don't think it would be very much.

Q. Doctor, suppose the dosage of Imdrin were doubled, in your opinion, what effect would Imdrin in double the dasage have on the pain of rheumatoid arthritis?

A. It might have slightly more effect in some cases, but at no time would it be anything more than temporary
514 and partial relief.

Q. Doctor, what is infectious arthritis?

A. Infectious arthritis is an inflammation of the joints resulting from a specific organism such as gonococcus or the streptococcus and pneumococcus or tubercle bacillus, or any of a number of other organisms which can produce disease in the joints.

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Q. There may be, as I understand it, different causes of infectious arthritis?

A. Well, it is a different organism.

Q. Different organism?

A. For each type.

Q. Would each of the causes of infectious arthritis require essentially different kinds of treatment?

A. Yes, they would. Right now with the anti-biotics, that is, things like penicillin or aureomyecin, it boils down in most of those cases to giving one of those, but you would still have to pick the one that would be of the greatest value, and at the same time there are other measures that would be required such as splinting and tapping, and so on, depending on what the disease cause was.

Q. I believe you have already discussed the consequences of delay in appropriate treatment of infectious arthritis, have you, or would you care to say anything—

Mr. Gettleman: That question is objected to, on 515 the ground, if the Trial Examiner please, for the reasons previously stated.

Mr. Callaway: I will withdraw the question. I think he has already covered it.

Q. Doctor, now, what are some of the pathological changes which may occur in infectious arthritis?

A. Pathological changes which occur are in many respects similar to those occurring in rheumatoidal arthritis, except that they occur much more rapidly ordinarily because it is a most acute destruction. There would be destruction of the lining of the joints, and destruction of the cartilage, and perhaps fusion, or a lot of bone destruction, and forming of actually an abscess in the area as the result of the increased pressure and of the purulent material that is in the joint.

Q. In your opinion, Doctor, is there any drug or combination of drugs which can restore to normal all the structures which may be damaged in infectious arthritis?

A. No, there is no drug or combination of drugs.

Q. What are some of the symptoms of infectious arthritis?

A. Well, the symptoms will be general feeling of weakness and illness, marked swelling, redness, and tenderness of the joint; pain may be very severe, and in addition to that, the patient might have a chill or usually would have chills and possibly high fever.

516 Q. In your opinion, what effect would Imdrin taken as directed have on the pain of infectious arthritis?

A. Depending on the degree of the disease, I would say that in most cases it would have very little, if any, effect, but if it did have an effect, it would only be a temporary and partial effect.

Q. Suppose the dosage of Imdrin were doubled, in your opinion, what effect would Imdrin have, in double the dosage, on the pain of infectious arthritis?

A. The previous answer would apply there, I believe. It would still only have a slight effect which would be temporary and partial.

Q. Doctor, you have indicated that there are millions of people in this country suffering from these various rheumatic and arthritic conditions. Are many of them crippled as a result of such conditions?

A. Yes.

Q. Are many of them bedridden?

A. Yes.

Q. Are many of them on crutches?

A. Yes.

Mr. Gettleman: If the Trial Examiner please, I will object to that unless he states how many. We don't know what he means by many. We should have a common denominator here. We should have some idea. Five
517 may be many or a hundred may be many or a thousand, I don't know. He said seven and a half million people suffer from rheumatism and arthritis. I think we should be told of those how many are ambulant, how many are crippled, bedridden, then we would have a complete picture. I submit "many" does not answer the question. It won't help us in the slightest.

Trial Examiner Lipscomb: I believe the doctor stated that there were a number of some millions of people suffering with that. He quoted some statistical data.

Mr. Gettleman: Seven and a half million.

Trial Examiner Lipscomb: It must be within the doctor's own knowledge how many million actually have the disease, and it couldn't be a man's personal knowledge, I suppose. I ask you to modify the question and bring it out as best you can.

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By Mr. Callaway:

Q. Now, Doctor, basing your answer on your experience and observation and taking the figure which you have quoted as to seven and a half million being afflicted with the diseases, coupling that with your own experience, in your opinion, what proportion would you say of those having these various rheumatic conditions are crippled as a result of such conditions? It will only be an estimate, I know, and if you can't give us an estimate, why, just
518 say so. If you feel that you could give us an estimate, we will be glad to have it.

A. I would say—and, as I say, it is only an estimate—about 10 per cent of that seven and a half million are seriously crippled.

Q. Doctor, in your opinion, would Imdrin taken as directed arrest the progress or correct the underlying causes of any kind of arthritis?

A. No.

Mr. Gettleman: Excuse me. We do have our objection to that line of questioning?

Trial Examiner Lipscomb: Yes.

Q. Will Imdrin, if taken as directed, arrest the progress or correct the underlying causes of any kind of rheumatism?

A. No.

Q. Gout?

A. No.

Q. Fibrositis?

A. No.

Q. Neuralgia?

A. No.

Q. Bursitis?

A. No.

Q. Neuritis?

A. No.

519 Q. Sciatica?

A. No.

Q. In your opinion, will Imdrin taken as directed cure or prevent the recurrence of any kind of arthritis?

A. No.

Q. Will it cure or prevent the recurrence of any kind of rheumatism?

A. No.

Q. Gout?

A. No.

Q. Fibrositis?
A. No.
Q. Neuralgia?
A. No.
Q. Bursitis?
A. No.
Q. Neuritis?
A. No.
Q. Sciatica?
A. No.

Q. Doctor, in your opinion, is Imdrin taken as directed, an adequate, effective or reliable treatment for any kind of arthritis?

A. No, it is not.

Q. For any kind of rheumatism?

520 A. No.

Q. Gout?
A. No.
Q. Fibrositis?
A. No.
Q. Neuralgia?
A. No.
Q. Bursitis?
A. No.
Q. Neuritis?
A. No.
Q. Sciatica?
A. No.

Q. Doctor, in your opinion, is Imdrin taken as directed an adequate, effective or reliable treatment for the symptoms of or manifestations of any kind of arthritis?

A. No.

Q. For any of the symptoms or manifestations of any kind of rheumatism?

A. No.
Q. Or gout?
A. No.
Q. Fibrositis?
A. No.

Q. Neuralgia?

521 A. No.

Q. Bursitis?
A. No.
Q. Neuritis?
A. No.

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Q. Sciatica?

A. No.

Q. Now, you have been considering this preparation in the light of the directions for use as stated in the complaint in these answers which you have just given, I take it.

Now, if the dosage were increased to double that amount, would your answers be the same?

A. Yes, they would.

Mr. Callaway: That is all the questions I have.

Trial Examiner Lipscomb: Off the record.

(Discussion off the record.)

Trial Examiner Lipscomb: We will have a short recess.

(A short recess was taken.)

Trial Examiner Lipscomb: The hearing will come to order.

Cross-Examination by Mr. Gettleman.

Q. Doctor, you stated that you were familiar with the formula of Imdrin, is that right?

522 A. Yes.

Q. Do you know the quantitative and qualitative formula?

A. I may not give you the exact figures. I can give it approximately, though.

I think there is acetyl salicylate—I am talking about each tablet.

Q. Yes.

A. Do you want me to give it to you?

Q. Yes, if you know.

A. Acetyl salicylate, 1.9 grains. That is the aspirin; manganese salicylate, 1.5 grains; thiamin chloride, 5 milligrams; calcium succinate I believe is 3 grams. I may be off on that. I don't recall the exact figure on that. Caffein a quarter of a grain. That is, .16 grains, approximately.

Q. And that, to your best recollection, is the qualitative and quantitative formula?

A. Yes, that is correct as far as I recall offhand.

Q. Doctor, will you tell us when you first became familiar with the formula?

A. I believe—now, I may be wrong on this, at least on the quantitative formula—I believe it is on the bottle, if I am not mistaken—or I may be wrong, it may be in the

advertisements, I don't recall. I think it is—I am almost positive it is on the bottle. I think by law you are
523 required to put it on the bottle, aren't you?

Q. When did you first see the bottle, Doctor?

A. I first saw the bottle when one of my patients showed it to me.

Q. Could you tell us how long ago?

A. About—I don't recall exactly—perhaps two years ago, or thereabouts, something like that.

Q. Would you say that was the first time you became acquainted with the quantitative formula?

A. I don't believe that they have a quantitative formula on the bottle.

Q. Then, did I understand you correctly to say that you might have gotten the quantitative formula from the newspaper advertisements?

A. No. I said I may have gotten the qualitative formula from the newspaper ad or from the bottle.

Q. I see.

A. I don't believe I got the quantitative formula from that. I believe I got the quantitative formula from the Food & Drug Administration.

Q. Were you shown the complaint in this case at that time? Do you remember?

A. When I was shown the formula?

Q. Yes.

A. No. As I say, I didn't get it from the Federal
524 Trade Commission. This was for the Food & Drug Administration, and some of their men—one of the doctors came and talked to us about it, and I believe that is when we got the actual quantitative formula.

Q. Did you ever see the complaint in this case?

A. Yes.

Q. When did you see that? That is, for the first time?

A. It must be a year, anyhow, I think, something like that. I don't recall the exact date.

Q. Will you tell us, Doctor, whether you conducted any clinical cases of your own with Imdrin?

A. Yes, I did.

Q. Did you set up the cases?

A. I don't understand what you mean by setting them up.

Q. Tell us what you did when you say that you have had clinical experience with Imdrin?

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A. Well, we—and I say "we" because there was another doctor involved, but I did some of them and he did some of them—we had a regular program set up whereby we checked the exact extent of the arthritis in the patients, and by actual measurement of the joints' motion and swelling, listing it according to degree as 1, 2, 3 and so on, the amount of pain they had on motion, also listed according to degree which is a method recommended by the American Rheumatism Association, and then we
325 started—we did some laboratory work before they were started which included blood counts and sedimentation rates and urinalysis, and I believe that is all I recall at the moment.

Q. How many patients were there, Doctor? Do you remember?

A. About 10, I believe we set it up on.

Q. About 10?

A. Yes, that's right.

Q. When you gave your answers previously in which you enumerated those cases in which Imdrin when taken as directed gave temporary and partial relief, did you have in mind the results of those cases, Doctor?

A. Yes, the results of those, and also the results of what, knowing the formula, I would anticipate from the use of the medication. I mean, that opinion is not based on those cases entirely at all. It is based on a knowledge of what is in the medication, based on the knowledge of my experience with various drugs, and what I feel reasonably sure those drugs can do.

Q. That's right. I am trying to find out whether by virtue of your past experience as a practitioner in this field your opinion as to what that type of drug would do was also disclosed by these 10 cases you have had.

A. No. Those 10 cases merely confirmed the opinion.

Q. Doctor, you stated that about 10 per cent of the people suffering from rheumatism and arthritis are
526 seriously crippled, is that not right?

A. Yes, that is what I stated. Do you want me to elaborate on that a bit? I made that statement, yes.

Q. That's right. In other words, about six million, several hundred thousand are not seriously crippled, is that right?

A. Yes, approximately. I don't want to be held specifically to that amount.

Q. We just want your best opinion so that we can get down to the facts.

A. When I say seriously crippling—I mean I want to elaborate on that—when I say seriously crippling, I mean they are completely useless for anything, they are bedridden, or something of that kind. The degree of crippling depends on what an individual has to do.

Q. That's right. Doctor, is there any specific or any approximate age that humans develop pains and aches? Would you say over 35, for instance, or over 40 or over 50?

A. I don't quite understand what you mean.

Q. Well, let's begin in this way: Are pains more prevalent in older people than in younger people, Doctor?

A. Well, depends on what you are referring to. If you are referring to arthritis alone—

Q. That is all we are referring to, Doctor, at this hearing.

527 A. I see.

Q. We are referring to manifestations of rheumatism and arthritis that you have testified to?

A. Well, I will—I don't think I can answer that and say that is necessarily true. I think that they are about evenly divided. Some of the diseases will affect younger people, and some will affect older people more often. I would say there is about as much of each. If you mean that there are more older people who have, say, as I said before, degenerative joint disease or osteo-arthritis, it is a normal aging process, then you might say that more older people might be likely to get that than younger people. That is all I could say about that.

Q. Now, Doctor, when a patient comes in to see you complaining of any of the manifestations of either arthritis or rheumatism, you stated that first you gave him or first took a personal and familial history, is that not right?

A. That is correct.

Q. And then you gave him a thorough physical examination?

A. That's correct.

Q. That was followed up by discovering the various neurological manifestations and by various tests such as blood tests and urinalyses, is that not correct?

A. That is correct; what was felt to be necessary.

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528 Q. Will you tell us, Doctor, approximately how long of a period of time does it take for those tests and to get all the history?

A. To get the history and do the physical examination and get all the tests?

Q. That's right.

A. Of course, the tests are done by technicians in a laboratory. I mean that might not be necessarily done the same day or the same time. Usually the urinalysis is. Perhaps the patient will go to the laboratory or come back at some other time to get the additional tests or get X-rays or so on.

For the other examination, it would take anywhere from—well, anywhere from 45 minutes to two hours, depending on the exact extent of the disease and what is involved. I mean sometimes it takes a very short time because there isn't much history to obtain, and at other times it can be a very involved procedure.

Q. When you say in those cases that it might become a very involved procedure, how much time on the average would elapse in those cases, Doctor?

Mr. Callaway: You mean for just the history?

Q. Whatever the involved procedure is.

A. For history and physical examination?

Q. For history and physical examination. Approx-
529 imately, Doctor.

A. I ordinarily allow an hour altogether. Actually, it overlaps sometimes, depending—well, sometimes an hour and a half, and then sometimes for the more involved cases it is as long as two hours.

Q. Then, of course, there are various tests such as blood counts and urinalysis, those are taken by the laboratory technicians?

A. That's right.

Q. Those cases that come to your attention of people suffering from rheumatism and arthritis or those various manifestations of each, they usually complain of pain, is that not right, Doctor?

A. That is the most frequent complaint, yes.

Q. Doctor, will you tell us, if you know—I will withdraw that.

Your consideration is to make that patient as comfortable as possible in as short a period of time as possible while the tests are being made and while you are seeking

for the cause, if you can find one, is that not right, Doctor?

A. Yes, that is correct. I mean, patients coming in aren't too interested in causes, they are primarily interested in getting relief, so that we have to direct our efforts towards that. I mean, we may never make a diagnosis
530 in some cases, I think I said that before.

Q. That's right, and in some cases you may never relieve the pain also, is that not right, Doctor?

A. That is very definitely correct.

Q. And in some cases there is nothing that anybody can do in order to stop the progression of the degeneration in the various parts, is that not right, Doctor, in some cases?

A. At the present time in some cases there is nothing that anybody can do to stop the progression of a disease, I would say. However, there is more that can be done than could be done some time ago.

Q. But there are some cases in which nothing can be done?

A. Yes, that's right.

Q. Doctor, will you tell us, as far as you know, that after a joint, for instance, has been degenerated or muscles atrophied, there is not much that can be done to restore the tissues, for instance?

A. Oh, that is true of the joints in general, yes, but not of the muscles.

Q. That is true of the joints in general?

A. In general, yes, but once there is an actual organic change to a certain point—now, if the change is just swelling or what we call hyperemia which involves too much circulation of air, that is a reversible change.

Q. That is only redness, is that correct—hyperemia?

531 A. Yes, that's correct.

Q. Well, I don't mean—

A. If there is actual destruction of cartilage or bone or of the tissue, the only restoration can be through healing and the formation of scars rather than restoration to normal.

Q. Doctor, do you know of any prescription which you give or can give that will cure or prevent an occurrence of any of the manifestations that you have discussed concerning the various arthritities and rheumatisms?

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A. Well, I answered that before. I said I know of no one drug or combination of drugs, so I think I can repeat that.

Q. And, of course, when you say you know of no drug or combination of drugs, that refers to the medical profession, as your knowledge of that subject is concerned, is that not right?

A. Yes. I would say offhand that I do not think any doctor does know. Some men claim they do, but I don't think they do.

Q. Doctor, will you tell us what manifestations of rheumatism or arthritis are usually self-limited in their scope?

A. I mentioned the fact that certain of these diseases were self-limited.

Q. Which ones, Doctor?

A. Well, I—

532 Q. I don't remember that you said any specific ones.

A. Well, for example, palindromic rheumatism, which is a recurrent type of rheumatism, a self-limited, in the sense that in most cases no matter what we do, the patient continues his merry course, he gets swelling and pain in his joints at regular intervals, then they disappear and he feels better, and then he gets them again. That is one in particular that is self-limited.

Gout in the acute form is essentially self-limited. That is to say, a person will get an attack, and, as said before, within a few days or perhaps a week or so, the attack will subside without any medication, in some cases. Now, that does not apply to chronic gout. There is a definite difference there, and sometimes so-called arthritis as a result of injury will subside because the individual will rest and take care of it, and in that way it will go away by itself. But, of course, treatment will help if given properly, but over a period of time those will clear up spontaneously.

Q. Doctor, will you tell us whether you prescribe salicylates for the relief of pain?

A. Yes, I do.

Q. Doctor, will you tell us whether or not you know of any prescription or have prescribed any yourself, any combination—any single or combination of drugs that

533 can bring complete and permanent relief of gout?

A. No. I know of no single drug or combination of drugs that will bring complete and permanent relief of

gout because gout is a chronic disease even with acute manifestations.

Q. Doctor, will you tell us whether or not you know or whether or not you have prescribed any drug or combination of drugs that can give complete and permanent relief of bursitis?

A. No, I don't know of any that will do that.

Q. Doctor, do you know of any drug that gives permanent and complete relief of pain in bursitis?

A. No.

Q. Doctor, will you tell us whether or not, in your experience, you have prescribed ann single drug or combination of drugs to relieve the pain of sciatica permanently and completely?

A. No, I have not given any. I don't know of any.

Q. As I understand it, then, Doctor, in these various manifestations of rheumatism and arthritis, you do not know of any prescription that will bring complete and permanent relief of pain in any of these manifestations, do you, Doctor?

A. No, I do not.

Q. Doctor, will you tell us, when a patient comes in to see you and complains of pain, the only means of 534 understanding or measuring that pain is purely subjective, is it not, Doctor?

A. Well, not—

Q. Primarily, that is.

Mr. Callaway: Let him answer it in full.

Mr. Gettleman: I want him to.

A. Not completely. There are certain tests. Pain in an individual will vary. For example, you might have a headache and not pay any attention to it, and the same headache in me will be putting me in bed, and so all we have—there are some actual instruments—I have never used them—for measuring the degree of pain that a patient can tolerate without too much change, but we do have—

Q. I am not referring to those instruments. You say you don't have them, anyhow.

A. What I mean is—I was just bringing it in that there are other tests, one of them is called the Libman test, which is easily performed, and it is to determine the reactivity of a patient to pain, and that is pressure on these two points here (indicating) which in most patients will get quite a good response, and in some people you can

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press until you feel as though your fingers are going to go through and they just look at you and smile as though nothing had happened, but, it is still a subjective thing, as you say; you are actually right.

Q. Will you tell us, Doctor, whether or not it is a
535 well-known fact as you very aptly put it, that individuals can withstand different degrees of pain? Is that not right? That is common knowledge, is it not?

A. That's right. It depends on the individual.

Mr. Gettleman: That is all.

(Witness excused.)

Trial Examiner Lipscomb: The hearing is adjourned to reconvene in Chicago, Illinois, on Thursday morning of this week, as previously announced.

(Whereupon, at 12:30 p. m., January 22, 1951, the hearing in the above-entitled matter was adjourned.)

536 Room 802-A, United States Post Office,
Chicago, Illinois,
Thursday, January 25, 1951.

Met pursuant to adjournment, at 10:00 a. m.

Before:

Abner E. Lipscomb, Trial Examiner.

Appearances:

Joseph Callaway, Counsel supporting the complaint.

James B. Goding, Attorney for the Respondents, 327 Southern Building, Washington 5, D. C.

537 Proceedings.

Trial Examiner Lipscomb: The hearing will come to order.

What does the counsel supporting the complaint have to offer this morning?

Mr. Callaway: If your Honor please, yesterday afternoon about four o'clock I received a telephone call from Dr. Rosenberg's office. As you know, this hearing is convened today for the further cross-examination of Dr. Rosenberg, who gave his direct testimony in November.

As I say, yesterday afternoon about four o'clock I received a phone call from his office and his secretary told me that he had just gone home with a fever of 102 degrees. She was doubtful if he would be able to be down here this morning. I talked to him twice over the telephone after that at his home, once as soon as he got home, in which he said he hoped that he would feel better by this morning and would be able to make it. The second phone call was a little later after another doctor had come in and had seen him, and his temperature had gone up, and he was feeling worse. The doctor, his physician, had told him it would be utter foolishness for him to attempt to appear and testify this morning. So, much as I regret it, I must ask the continuance of this case to a further date, when he is able to appear and testify.

Now, we have talked it over with counsel, I have
538 at least, with counsel for the respondent, and the 14th day of February, as I understand it, is an agreeable date for a continuance of this hearing.

Is that right, Mr. Goding?

Mr. Goding: That is agreeable to the counsel for the respondents.

Mr. Callaway: We could get an earlier date than that, but I understand an earlier date than that would probably be ruled out by other commitments of the Trial Examiner himself, is that correct?

Trial Examiner Lipscomb: That is correct.

Then, under the circumstances, we have no alternative but to adjourn this hearing to the date suggested.

Before adjournment, however, the Trial Examiner has one matter he wishes to present to counsel for the respondent.

The Economic Stabilization Agency has requested the Federal Trade Commission to lend to the first agency the services of the Trial Examiner for a period of time. In view of that request, and the urgency of the request, the Trial Examiner would like a statement from Counsel for the Respondent as to whether they would agree in the event that the Trial Examiner is actually placed early in the other agency to the substitution of another and different Trial Examiner.

May I hear from the Counsel for the Respondents on that matter?

539 Mr. Goding: The respondents, of course, would in-

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terpose no objection to substitution of another or a new Trial Examiner because of the circumstances indicated.

Trial Examiner Lipscomb: And I assume that you speak for all respondents?

Mr. Goding: I speak for all respondents in that regard.

Trial Examiner Lipscomb: Your cooperation and courtesy in this matter is appreciated by the Trial Examiner. The hearing is now adjourned to reconvene in this room on February 14, 1951, at 10 o'clock in the morning, before the present Trial Examiner or one that may be substituted in his stead.

(Whereupon, at 10:15 o'clock, a. m., Thursday, January 25, 1951, the hearing in the above-entitled matter was adjourned to Wednesday, February 14, 1951, at Chicago, Illinois.)

540

Room 802A,
United States Post Office,
Canal and Van Buren Streets,
Chicago, Illinois,
Thursday, February 15, 1951.

Met, pursuant to adjournment, at 9:00 a. m.

Before:

Abner E. Lipscomb, Examiner.

Appearances:

Joseph Callaway, Attorney for the Federal Trade Commission.

James B. Goding, Attorney for the respondents, 653 Washington Building, Washington, D. C.

Frank E. Gettleman, Attorney for the respondents, 10 South LaSalle Street, Chicago, Illinois.

541

Proceedings.

Trial Examiner Lipscomb: Let the record show that the Trial Examiner appeared at the hearing room, Room 802A, New Post Office Building, Chicago, Illinois, on February 15, 1951, at 9:00 a. m., in accordance with notice previously issued and served both upon the respondent and counsel for and in support of the complaint.

After waiting for a reasonable length of time without appearance having been presented either by counsel supporting the complaint or by respondents' counsel, the Trial Examiner observes their absence and failure to appear and adjourns this hearing.

The Trial Examiner endeavored to contact attorney supporting the complaint at his hotel without success. No official message had been delivered for him at the offices of the Federal Trade Commission. The Trial Examiner presumes that counsel in support of the complaint is probably engaged in the Federal Court in an injunction proceeding, but of this matter he has no certain knowledge. This particular hearing was set at his request, and no request has been received by the Trial Examiner for its cancellation. In view of these circumstances, this hearing is adjourned. Notice of a future hearing will be given by the Trial Examiner.

(Whereupon, at 9:30 a. m., Thursday, February 15, 1951, the hearing in the above-entitled matter was adjourned sine die.)

542 Room 801,
United States Post Office,
Canal and Van Buren Streets,
Chicago, Illinois,
February 16, 1951.

Met, pursuant to adjournment, at 10:00 a. m.

Before:

Abner E. Lipscomb, Examiner.

Appearances:

Joseph Callaway, Attorney for the Federal Trade Commission.

James B. Goding, Attorney for the respondents, 653 Washington Building, Washington, D. C.

Frank E. Gettleman, Attorney for the respondents, 10 South LaSalle Street, Chicago, Illinois.

543 Proceedings.

Trial Examiner Lipscomb: The hearing will come to order.

The record will show that this hearing this morning is through the courtesy and cooperation of the counsel for the respondent, the respondent not having received the usual five day notice of the hearing. His courtesy in this matter is appreciated.

Perhaps the counsel supporting the complaint would like to make a very brief explanation for the record of the non-appearance of counsel on yesterday?

Mr. Callaway: Yes, sir, I would.

This hearing was originally set for yesterday at this same place and this same hour, I believe, at which I did not appear on account and for my failure to appear at that time I went to show on the record a very humble apology.

I was engaged in last minute preparations for a hearing in the United States District Court here in Chicago for the injunction matter which was heard by the court yesterday morning at ten o'clock and taken under advisement by him.

I should have notified the trial examiner but I did not know until we went to trial in the District Court yesterday morning whether we would go to trial at that time for the simple reason that case was set for the day before in the United States District Court and the judge did
544 not show up so it together with other cases were set for yesterday morning and it was a question of which case the judge would hear yesterday morning and there was no way for me to know whether he would hear our case as he did or whether we would have to go over to some other date, therefore I had to make all the preparations possible for it including getting up some affidavits to counter affidavits that the respondent had filed the day before.

Trial Examiner Lipscomb: The explanation of counsel supporting the complaint is duly accepted and appreciated.

We are now ready to proceed with the examination of the witness.

Mr. Callaway: Dr. Rosenberg is up for additional cross-examination.

EDWARD F. ROSENBERG was thereupon recalled as a witness for the Commission and, being previously duly sworn, testified as follows:

Cross-Examination (Continued) by Mr. Goding.

Q. Doctor, I think it was November 20, 1950 when you were here last and at that time in the direct examination you stated that when a patient is suffering from the manifestations of rheumatism and arthritis and comes to
545 you with regard to that condition or those conditions you first take his history and then give him a complete physical examination, is that right, doctor?

A. Yes, sir.

Q. And then you stated further that you examined the joints for mobility, swelling, tenderness and discoloration, is that right?

A. Yes, sir.

Q. And as a further routine that is followed up with laboratory tests.

A. Yes, sir.

Q. Is that right, sir?

A. Yes, sir.

Q. How long does this complete regimen, that is from the taking of the history to the completion of the laboratory tests required, how long a period?

A. Varying from a few hours to a few days.

Q. Well, in the meantime isn't it true that in the usual rule of the patients suffering from these manifestations that pain exists?

A. Well, I would certainly object to grouping of these people as a usual run because that certainly can't be done in actual practice. One will encounter amongst these individual patients who require immediate treatment, I mean
patients in whom treatment ought to be instituted
546 proper treatment ought to be instituted within a matter
of a few hours if you are going to get the best kind of a result. If one simply says these are all usual cases and gives them any pain relieving remedy it will do some of them harm.

Q. Just a minute, please, doctor, will you stop for a moment?

Mr. Goding: I move that that answer be stricken. If the doctor feels that he can't answer the question I think he should so indicate. I don't think that he should go beyond the purport of the question and I think he is doing that now; in all fairness.

Mr. Callaway: Now, I think he is entitled to give any explanation he sees fit as to why he can't answer the question and that is what he was doing.

Mr. Goding: I think it is quite obvious that he is answering something that wasn't asked.

Trial Examiner Lipscomb: Mr. Reporter, will you read me the question, please?

(The reporter read the question as follows:

"Question: Well, in the meantime isn't it true that in the usual rule of the patients suffering from these manifestations that pain exists?"

Trial Examiner Lipscomb: The objection is sustained and the motion to have it stricken is granted.

Mr. Goding: Doctor, I will reframe the question.

Mr. Callaway: Off the record.

547 Trial Examiner Lipscomb: Off the record.

(Discussion off the record.)

Trial Examiner Lipscomb: On the record.

Mr. Goding: The question is withdrawn.

By Mr. Goding:

Q. Now, doctor, in the greater number of cases, of the type of cases that we are referring to isn't it true that the patients suffering from these manifestations, that is, these people to whom we have referred now in our questioning and answers just previous that complaints of pain are made to you?

A. Yes.

Q. What other manifestations, that is, other than pain, would there be?

A. There are many, and I think I can refer you to the record of our previous proceedings here in which I outlined for this hearing briefly symptoms of a number of different rheumatic diseases.

Q. I think you are right, doctor, and I shan't ask you to be repetitive on that.

Q. Now, what do you do for these people with regard to their complaints of pain, for the relief of the pain? We are talking now about this period from the time they first come in and you take their history up until there is the completion of the laboratory tests. What is your therapy for the pain during that period?

548 A. Well, sir, there again I would respectfully refer you to my previous comments at this hearing in which I described not only symptoms and manifestations but I believe I also outlined very briefly our orthodox treatment measures for these numerous diseases and I do believe that I pointed out at that time that treatment procedures would differ for each one and that under no circumstances would a careful doctor lump them together and try to treat them as a run of the mill or routine matter.

Q. Excuse me, doctor, I wish doctor you would try to focus your attention specifically on the question and I think the question is very simple. I may have it complicated but if it isn't simple to you I will rephrase it and try to make it clear. Would you please read the question back?

(The reporter read the question as follows:

"Question: Now, what do you do for these people with regard to their complaints of pain, for the relief of the pain? We are talking now about this period from the time they first come in and you take their history up until there is the completion of the laboratory tests. What is your therapy for the pain during that period?")

By Mr. Goding:

Q. Just for the pain, doctor, during that specific period, not treatment for the conditions.

549 A. I am sorry, but I think I would have to answer the same because there is no standard or routine treatment.

Q. Well, doctor, isn't it a fact that you would prescribe salicylates for the relief of the pain?

A. Yes, I might under certain circumstances.

Q. Isn't that, doctor, the universal procedure of the medical profession?

A. I don't believe I would put it that way.

Q. How would you put it?

A. I believe that good doctors everywhere would proceed as I indicated and plan treatment according to the nature of the disease.

Q. We are talking about the pain, doctor.

A. I repeat that the plan would be the same, that all pain is not treated the same, that physicians do not have a standard approach to treatment of pain.

Q. What else besides salicylates by way of medicaments would be prescribed for the relief of pain?

A. The attack on the question of pain is as varied as the different approaches doctors have in treating disease. Sometimes the treatment of pain is to undertake a surgical procedure; sometimes it requires X-ray treatment; sometimes any one of many other treatment measures are employed for pain. I don't use salicylates or any other treatment measures routinely when a man say "I hurt."

550 Q. Doctor, we are referring, of course, to the period which extends from the time they first come in until you know the full case. We are talking about that period.

A. Well, I am sorry, but I can't talk about that period because there is no standard or routine to apply in such a period. Every patient is a problem unto himself.

Q. Let me ask you specifically a supposition case. Let's assume I came in and gave you a history of some considerable pain and I told you certain other things which indicated to you that I was suffering from one of the various types of arthritis and rheumatism. Now, I think you stated there would be a regimen of extensive diagnosis concluded by laboratory tests. Now, during that period, doctor, in which I am complaining of pain until you know ultimately what specifically my condition might be in this

realm or area of arthritis or rheumatism what specifically would do you do to relieve me of that pain?

A. I think it is possible that among other things I might advise the use of salicylates.

Q. All right. Now, you say there are various causes of sciatica. In your practice of medicine do you know of any drug or combination of drugs that you can prescribe that will afford complete or permanent relief from pain in this condition?

A. No, I do not.

551 Q. And I think you stated there are various causes of neuritis and different kinds of treatments employed for this class of disease. Now, will you tell us whether you have ever used or know of any prescription that will afford permanent and complete relief from pain in cases of neuritis?

A. Well, sir, your question would imply that a doctor would always approach that subject with the idea in mind of writing a prescription which certainly is not a usual procedure for a physician under those circumstances.

Q. What would it be?

A. He would attempt to determine the cause of it and to proceed accordingly.

Q. In other words, we are coming back essentially to what was said with regard to the pain in the general area of arthritis and rheumatism during the period of the diagnosis, is that right?

A. I am not sure that I am coming back to your point of view, sir. I insist that the proper procedure would be different according to the nature of the disease.

Q. Do you know of any single drug or combination of drugs that will afford complete and permanent relief from pain in cases of bursitis?

A. Well, sir, I would have to refer you again to my previous testimony in which I tried to point out that bursitis may result from many different causes.

552 Q. Do you know of any single drug or combination of drugs that will afford complete and permanent relief from pain in any case of bursitis?

A. That would depend on—my answer would have to depend on the nature of the bursitis.

Q. Well, sir, do you say that there might be a case of bursitis in which it would afford, some drug or combination of drugs would afford complete and permanent relief?

A. Yes, sir, I think that is true.
Q. Complete and permanent relief?
A. I think so, yes.
Q. Will you tell us what the specific condition of bursitis is and the drug or combination of drugs that would accomplish that?
A. That is an everyday situation, I would say. It is not uncommon for us to encounter bursitis caused by a bacterium and one might very well approach the treatment of it with a single drug, anti-biotic which would be active against that bacterium and destroy it, help the organism to recover from that disease.
Q. Very well. Are there any other conditions of bursitis other than those that are caused by bacteria in which a single drug or combination of drugs will afford complete and permanent relief from pain?
A. I think it is not possible to answer that ques-
553 tion in a moment. One would have to review or I would have to review in my mind again the many types of bursitis and to review again the approach to treatment that in my mind would be indicated for such cases.
Q. Are you saying then you can't think of any other such cases at this moment?
A. I say to you—
Q. At this moment.
A. I am saying I wouldn't recommend the use of salicylates in the use of bursitis.
Q. Please, doctor, I haven't asked you specifically about that. I think I have asked you a very simple question and I want to be fair with you. I am merely asking you now if this isn't the fact, that no other type of bursitis, that is, other than that caused by bacteria comes to mind, is that right?
A. At the moment I would say that is right.
Q. Do you know of any single drug or combination of drugs that will afford complete and permanent relief from pain in cases of neuralgia?
A. No, I do not.
Q. Fibrositis?
A. No, sir.
Q. Gout?
A. Complete and permanent relief, no.
554 Q. Osteoarthritis?
A. No, sir, there is no such drug.

Q. Or combination?
A. Or combination.
Q. Rheumatoid arthritis?
A. No, sir.
Q. Do you know of any drug or combination of drugs that would prevent the recurrence of rheumatoid arthritis, rheumatism, osteoarthritis, bursitis, gout, fibrositis, sciatic or neuralgia?
A. No, sir, I don't believe there is any such drug known today.
Q. Well, doctor, do you know of any single drug or combination of drugs that will cure or constitute an adequate full treatment for any of the various types of diseases which you have enumerated as coming within the category of arthritis and rheumatism in your testimony—
A. Again, I am sorry but I must refer you to the previous testimony. In that I tried to point out that a drug or combination of drugs may have nothing to do with treatment measures, proper treatment measures, for these diseases; that the problem is exceedingly complex and requires a great many different kinds of treatment procedures, and sometimes immediate application of these procedures. It isn't a matter of choosing the proper
555 drug or finding in a book somewhere the prescription to cure these cases.
Q. Excuse me, doctor— As you know, human memory is very, at best, is not too good, and rather than spend any time looking through your previous testimony I think I have asked a very simple question. I think you can answer the question yes or no. That question is this: Whether you know of any single drug or combination of drugs that will cure or constitute an adequate, full treatment for any of these various types of arthritis or rheumatism. I think you can answer that yes or no.
A. Well, sir, I am not sure where this question is leading.
Q. Now, wait a minute, please, doctor. I object.
A. May I finish?
Mr. Goding: I think that this reflects—
Trial Examiner Lipscomb: Just a moment. Doctor, regardless where the question is leading, counsel is entitled to an answer to his question. If it can be answered simply yes or no truthfully then it deserves that type of answer.
The Witness: Thank you. Pardon me, will you re-

phrase the question or restate the question? Let me hear it again, please.

Mr. Goding: Will you read it back, please?

(The reporter read the question as follows:

"Question: Excuse me, doctor—as you know, human memory is very, at best, is not too good, and rather
556 than spend any time looking through your previous testimony I think I have asked a very simple question. I think you can answer the question yes or no. That question is this: Whether you know of any single drug or combination of drugs that will cure or constitute an adequate, full treatment for any of these various types of arthritis or rheumatism. I think you can answer that yes or no.")

By Mr. Goding:

Q. If you can't answer it you might merely say so, doctor.

A. Do I know of any drug—forgive me, will you repeat the last part of that question?

(The reporter read the question as follows:

"* * * Whether you know of any single drug or combination of drugs that will cure or constitute an adequate, full treatment for any of these various types of arthritis or rheumatism. I think you can answer that yes or no.")

The Witness: Cure or constitute an adequate full treatment for any of these types of rheumatism. I believe I tried to answer that in relation to your former questions, sir, that it would depend on the exact situation of the disease or the patient under consideration, that there might be such a drug.

By Mr. Goding:

557 Q. Can you at this time suggest the name of that drug, the names in the combination of such drugs, and the specific type of arthritis or rheumatism with regard to which it might constitute a cure or an adequate full treatment?

A. Well, sir, my answer there would be the same as it regarded your questioning on the subject of bursitis. I would answer it along the same lines.

Q. In addition to bursitis can you think of any other type of arthritis or rheumatism?

A. I am sorry—

Q. In addition to bursitis can you think of any other

type or kind of arthritis or rheumatism that is in which a single drug or a combination of drugs would constitute a cure or a full and adequate treatment?

A. No, sir, I think if you asked me questions specifically about various other groups I will have to give answers along the same lines as those I have just given.

Q. All right, doctor, please, we are going to get along much faster. I don't have much more here. Try to focus your attention on my questions. I am asking you, sir, whether at the moment you can think of any other type of arthritis or rheumatism.

A. Whether I can think of any other type of arthritis or rheumatism?

Q. Yes, with respect to which any single drug or
558 combination or drugs would constitute a cure or a full and adequate treatment in addition to bursitis. My question again is simply whether you can think of any other type.

A. Well, I think the best I can do in answer to that is again I would answer along the same lines. It would have to depend on the particular situation and at the moment I don't know of an example to quote for you.

Trial Examiner Lipscomb: Off the record.

(Discussion off the record.)

By Mr. Goding:

Q. Doctor, in my earlier examination of you we were discussing the nature of conversations which you say you have had with several of your patients concerning the meaning of various advertisements relating to various proprietary drugs, do you remember that testimony, doctor?

A. Yes, sir.

Q. Now, I should like to ask you specifically to take any one of these occasions and to tell us first the approximate date of that conversation.

A. I am sorry but I can't give a date excepting to say that these conversations have occurred occasionally during the past year.

Q. Doctor, you say you can't give a specific date?

A. A specific date, that is right.

Q. Can you give us the month?

559 A. Oh, yes, I think conversations like that took place not more than a few weeks before our last meeting here. That would be in November or October.

Q. Now, was that subsequent to any discussion you

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might have had with any representative of the Federal Trade Commission concerning the matter of your testimony to be given?

A. Yes. The answer to that is yes, that would be subsequent.

Q. Now, I should like to ask you this, sir: Can you in your memory fix one single occasion prior to the time that you first had any discussion with a representative of the Federal Trade Commission relating to your future testimony here?

A. That would be very difficult but I can assure you that conversations—

Q. Just a moment, doctor.

Mr. Callaway: Let him give a full answer to that.

Mr. Goding: I asked him simply—

Trial Examiner Lipscomb: Off the record.

(Discussion off the record.)

Trial Examiner Lipscomb: Let me hear the question, please.

(The reporter read the question as follows:

"Question: Now, I should like to ask you this, sir: Can you in your memory fix one single occasion prior to
560 the time that you first had any discussion with a representative of the Federal Trade Commission relating to your future testimony here?")

Trial Examiner Lipscomb: I think it is a straight answer.

Mr. Goding: Yes or no.

Mr. Callaway: Wait just a moment, if your honor please.

Trial Examiner Lipscomb: Off the record.

(Discussion off the record.)

Trial Examiner Lipscomb: Doctor, have you answered the question?

The Witness: I will answer it. No, I can't fix a date.

Mr. Goding: That wasn't the question.

Trial Examiner Lipscomb: I think it was.

Mr. Goding: On a single occasion, I think I said.

Read the question back, please.

(The reporter read the question as follows:

"Question: Now, I should like to ask you this: Can you in your memory fix one single occasion prior to the time that you first had any discussion with a representative of the Federal Trade Commission relating to your future testimony here?")

By Mr. Goding:

Q. I might say, doctor, I am merely asking for the
561 occasion, the circumstances, not the date necessarily now, so long as it was prior to the first time you had any discussions with a representative of the Commission concerning your expected testimony. Can you fix any single occasion prior to that time?

A. I am afraid I don't follow you exactly as to fixing an occasion.

Q. Well, I will put it to you simply this way, doctor: In all of this period in which you have stated that you have had numerous discussions with patients concerning the advertisements of proprietary drugs whether you can in your memory fix the name of any patient, first, with whom you have had such discussions?

A. No, sir, I would not attempt to give you the name.

Q. Do you mean by that you can't remember?

A. I can't remember.

Q. You can or can not?

A. I can not.

Q. Can you remember the condition concerning which the patient first came to you in which or in connection with which you had discussions concerning the taking of proprietary drugs?

Mr. Callaway: Now, let me understand that.

Mr. Goding: I think it is fair and I should be permitted uninterruptedly to cross-examine this witness.
562 I think I am entitled to go forward on this. I think it is a fair question.

Mr. Callaway: I am not objecting to the question. I merely want to understand it. Are you still referring to the period of time prior to the time he was first approached by the Federal Trade Commission?

Mr. Goding: I think quite obviously from the context of my questions.

Mr. Callaway: I don't know that.

Trial Examiner Lipscomb: Can you answer that?

The Witness: Sir, it is not uncommon—it was not uncommon in years gone by for me to have discussions such as that with patients suffering from one of several diseases.

By Mr. Goding:

Q. Do you mean by that, doctor, that your failure of memory with regard to any single occasion and more spe-

cifically the condition in any one of those cases might be because there might be more than one type of condition concerning which the patient approached you, is that why you might have a failure?

A. Yes, that is one of the reasons.

Q. All right, then, doctor, will you give us the circumstances in which there were a great number of conditions concerning which a patient came to you?

A. A great number of conditions?

563 Q. Yes. Let's not get this confused, doctor. A moment ago you said the reason for your failure to remember a single occasion was that perhaps it was because they didn't come to you for one condition but they came to you for more than one condition. Now, I ask you simply can you remember any occasion in which such discussions were had with any patient who came to you with a combination or a group of conditions?

A. I am sorry, sir, but I don't believe I intended to give that impression.

Q. Well, all right, doctor. Very simply—

Mr. Callaway: Now, let him answer then. He is trying to chop him off to where he can't give a full answer.

Mr. Goding: I am not trying to do anything. I am trying to drag information out of the witness.

Mr. Callaway: You don't have to drag anything.

Trial Examiner Lipscomb: Let's not argue between each other. Address your remarks to the trial examiner.

Mr. Callaway: I would suggest that he tries to chop the doctor off to where he can't give a full answer. I suggest he be allowed to go forward with his answer.

Mr. Goding: I resent the characterization and I think your honor will readily concede that I am trying to do my utmost in a fair way to get information.

Trial Examiner Lipscomb: Proceed with your examination, counsel.

By Mr. Goding:

564 Q. Doctor, you realize, I am sure, that your testimony in this regard is very significant in this case, in this regard, and by that I mean where you hold yourself out as a consumer reaction expert.

A. Sir, I have taken a serious view of every part of this examination.

Q. All right, doctor, now let me ask you this: Do you

consider yourself an expert on the reaction of purchasers of proprietary drugs to the advertising relating thereto?

A. Sir, I don't know whether I should be characterized as an expert, but I have certainly talked with many people about this, people suffering from the diseases with which I am well acquainted. I have had some experience in this field.

Q. All right, doctor, will you give us the name of one person, one patient with whom you have talked concerning the advertising of any proprietary drug prior to the time when you were first approached by the Federal Trade Commission with regard to your expected testimony?

A. Sir, I must say I do not remember a name of such a person.

Q. Do you remember any of the circumstances relating to any single occasion?

A. Sir, those conversations—

Q. Yes or no, doctor, please.

A. Those conversations generally take place in my office.

565 Mr. Goding: I object to this.

The Witness: You asked me to describe the circumstances.

Trial Examiner Lipscomb: Read the question, Mr. Reporter.

(The reporter read the question as follows:

"Question: All right, doctor, will you give us the name of one person, one patient with whom you have talked concerning the advertising of any proprietary drug prior to the time when you were first approached by the Federal Trade Commission with regard to your expected testimony?")

Trial Examiner Lipscomb: Answer that question, if you can, doctor.

Mr. Goding: Yes, or no, I think.

The Witness: In a general way the answer is yes.

By Mr. Goding:

Q. All right, doctor, do you remember in those circumstances the name of the patient.

A. I have already stated, sir, that I do not remember the name of the patient.

Q. Do you remember the name of the proprietary drug involved in the advertising?

A. I can tell you.

Q. Yes or no, sir.

566 A. During recent years Imdrin and Dolcin have been the most frequently named or discussed preparations.

Mr. Goding: I move that that be stricken. We are referring to a single occasion. My question is directed to the circumstances of a single occasion.

Trial Examiner Lipscomb: The answer will be stricken. The witness is to answer as best he can without volunteering an explanation unless an explanation is required.

By Mr. Goding:

Q. Do you remember the name of the proprietary drug involved in any specific occasion having in mind the time element here?

A. I know I had many discussions about advertising of Imdrin.

Mr. Goding: I move that that be stricken.

Mr. Callaway: I object to that for the simple reason that whenever he asked him about what drugs have been discussed and then he says Imdrin then he objects to it.

Trial Examiner Lipscomb: The answer is not responsive in my opinion to the question and is stricken.

Mr. Goding: I should like to make a statement for the record, if the examiner please. I have the utmost respect for this witness' qualifications as a medical doctor. I think he is an outstanding man. I think his inability to present information in reply to what I think obviously has been a fair interrogation by myself leads but to one conclusion and that is this: That his testimony as a so-called consumer

567 reaction expert, that is, consumer reaction to newspaper advertising, is entirely worthless, and I now move that his entire testimony in that regard be stricken.

Mr. Callaway: Now, in answer to that, your honor, this witness has testified about Imdrin last fall, sometime prior to that, as your honor knows, testified about another similar preparation, these preparations in which the complaint alleges the drugs to be similar. There have been conversations between Dr. Rosenberg and myself and Dr. Rosenberg and medical officers of the Federal Trade Commission for at least a year and a half or two years.

Mr. Goding: Just a moment, Mr. Callaway.

Mr. Callaway: You wanted to make a statement and didn't want to be interrupted; let me make one uninterrupted.

Then for him to say that because the doctor honestly says he can't recall the circumstances of a particular conversation in regard to a particular drug with any particular patient prior to a year and a half ago and then say that that disqualifies him as an expert witness on what these advertisements mean I think is preposterous. That is what he is preventing and he has constantly sought to prevent any other kind of answers than that.

Mr. Goding: May I make this further point, if the examiner please?

Trial Examiner Lipscomb: Very brief, please.

568 Mr. Goding: Very briefly. In the first place again I resent the characterization of my attempts to draw out information from the witness but more important than that I think in our preliminary cross-examination of this witness going to his qualifications I think we adequately demonstrated then that he is not qualified as a consumer reaction expert. This seems to me very important, this matter of breaking down a witness who holds himself out as a consumer reaction expert, breaking down to specific cases where he has discussed any type of advertising concerning any product with regard to the meaning of the advertising.

If it were factual that he had sufficient of a background to qualify him it seems to me it wouldn't be difficult for him to single out in his memory a number of cases of individual occasions where there was a review of the advertising, otherwise what we have here is an attempt to telescope a history of talking over with the various patients the merits and lack of merits of proprietary drugs. I just can't see in all fairness how this otherwise well qualified medical doctor has qualified himself as an expert to speak on how consumers would react to newspaper advertising. It isn't sufficient, I respectfully submit, it isn't sufficient that this doctor discussed the ads of Imdrin, of a single drug and that drug the one involved here with any of his patients. That

569 isn't enough. It seems to me in order to qualify him as an expert there has to be shown a vast, extensive history of discussions with patients concerning a specific matter and that matter the meaning of advertising. Anything less than that does not so qualify him.

I do have one or two questions if your honor is going to rule against me on that.

Trial Examiner Lipscomb: Yes, I am going to rule against you for the simple reason that I would not want to

rule on this question without reviewing the direct examination. Any frailties that may appear in his testimony will of course be carefully observed by the trial examiner and in the end justice will be done as the trial examiner understands this. But at this time I am going to overrule your motion to strike.

Mr. Goding: We shall renew it then after all the evidence is in.

Trial Examiner Lipscomb: You may.

Mr. Goding: And your honor has an opportunity to read the record.

I do have one or two more questions and then I will be through with the doctor.

By Mr. Goding:

Q. Well, as a matter of fact, doctor, any discussions which you have had with any of your patients concerning the advertising of any drug were had in order that you would be in a position to give your best medical advice
570 as to the most desirable therapy for the patient's condition, were they not?

A. Yes, sir.

Q. And isn't it fair to say, doctor, that you never broke down any of the advertising which might have been brought to your attention by any patient in order to ascertain the reaction of that patient to the advertising under consideration?

A. By breakdown do you mean take them apart sentence by sentence, no, we did not do that.

Q. Well, how did you do it? Let's hear how you did it.

A. Well, sir, I don't think there is any rule. I think our conversations depended upon the nature of the advertising claim or upon the individual's reaction on what he had read. I doubt that there had been a plan or a regular procedure that I could outline to answer your question.

Q. How many times would you say, if you remember, how many times was advertising actually brought into your office prior to the time when you were first approached by the Federal Trade Commission?

A. Well, sir, I think I can say modestly that it must have happened two or three times a week for years.

Q. And during all that period, doctor, you can't remember the circumstances of any single occasion?

A. You have asked me to give names,—

Q. Any circumstances.

A. —and I do not remember them.

571 Q. Can you give us any circumstance?

A. I tried to answer that question previously by telling you these conversations generally take place in my consulting room, during the course of examination, history taking, repeated visits with patients to plan further treatments, and so forth. Those are the circumstances.

Q. Well, doctor, do you mean in your busy practice that when a patient would come in with, say, a newspaper advertisement that you would spend time looking over that newspaper advertisement and listen to him as to what his reaction to that was?

A. Yes, yes.

Q. You did?

A. Yes, we often do that.

Q. Often do that. How long would that take, doctor, on any one occasion?

A. That would vary; five minutes perhaps.

Q. Five minutes to what? What was the longest?

A. Well, I couldn't say.

Q. And you would spend five minutes and perhaps longer in looking over an advertisement and discussing it with a patient?

A. Yes, I am sure that has often happened.

Q. Two or three times a week?

A. Yes, I think that would be fair.

Q. But you didn't break down the advertisement?

572 A. Not usually, no.

Q. As a matter of fact, you have already said you have never broken it down sentence by sentence, isn't that right?

A. Yes, that is right, I don't remember ever breaking one down sentence by sentence.

Q. So it is fair to say you merely read this thing rather hurriedly and hear what the patient would say.

A. I think it would be fair to say that I have taken note of the contents of advertisements such as these.

Q. But you can't remember the name of any patient, doctor?

A. No, sir. I have already told you that I don't remember their names. I say that honestly, although—

Q. I am sure—

A. —I would give you such names if I could remember them. I would have to beg off as that is a matter of confidence.

Q. I might say this, doctor, I am sure you are trying to be honest but what you are saying doesn't have the full significance of what it appears to be.

Mr. Goding: I think that is all.

Mr. Callaway: That is all, doctor, thank you very much.

(Witness excused.)

Trial Examiner Lipscomb: Off the record.

(Discussion off the record.)

Trial Examiner Lipscomb: On the record.

573 Mr. Callaway: At this time I want to rest the case in chief in support of the complaint.

Trial Examiner Lipscomb: Off the record.

(Discussion off the record.)

Trial Examiner Lipscomb: On the record.

Counsel supporting the complaint having rested it now becomes the responsibility of the respondent to put in such defense as he may wish to offer.

The trial examiner requests counsel for the respondent on or about the 16th day of March 1951 to deliver to him a list of cities or places in which he desires hearings held, the approximation of the time which will be consumed there in direct examination, and any other information which he may be able to furnish to the trial examiner which will facilitate the continuation and completion of this proceeding.

Is there anything further to be offered at this time?

Mr. Callaway: No, sir, I haven't.

Mr. Goding: I think not.

Trial Examiner Lipscomb: The hearing therefore is adjourned.

(Whereupon, at ten o'clock a. m., February 16, 1951, the hearing in the above-entitled matter was adjourned sine die.)

574 Room 802-A, U. S. Post Office,
433 West Van Buren Street,
Chicago, Illinois,
April 4, 1951.

Met, pursuant to notice, at 10:00 a. m.

Before:

Abner E. Lipscomb, Trial Examiner.

Appearances:

Joseph Callaway, Attorney for the Federal Trade Commission.

Frank E. Gettleman, Attorney for Respondent, Jerome H. Rose, 10 South LaSalle Street, Chicago, Illinois.

James B. Goding, Attorney for Respondent, J. Sanford Rose, 653 Washington Building, Washington, D. C.

Edward Brodkey, Attorney for Respondent, Rhodes Pharmacal Company, Inc., 10 South LaSalle Street, Chicago, Illinois.

575 Proceedings.

Trial Examiner Lipscomb: The hearing will come to order.

Mr. Gettleman, at the conclusion of the present hearing I hope that you will be in a position to indicate to us your further request for further hearing, the place and time, and so forth.

Mr. Gettleman: Yes, we will be ready.

Trial Examiner Lipscomb: You may call your first witness.

Mr. Gettleman: Doctor, will you take the stand?

DR. SEYMOUR W. WEISBERG was thereupon called as a witness for the Respondents and, having been first duly sworn testified as follows:

Direct Examination by Mr. Gettleman.

Q. Will you please state your name and address, doctor?

A. Seymour W. Weisberg, 3520 Lake Shore Drive, Chicago, Illinois.

Q. What is your profession, doctor?

A. Physician, specializing in internal medicine.

Q. Are you licensed to practice medicine in the State of Illinois?

A. Yes, sir.

576 Q. Doctor, will you tell us so that we can ascertain your qualifications your academic background and your background in the field of internal medicine up to the present time?

A. I attended the University of Chicago where I received my bachelor of science degree. I then attended Rush Medical College where I was elected to Alpha Omega Alpha. I served my interneship at the Michael Reese Hospital and then had a residency in internal medicine at Cook County Hospital.

I was on the faculty of Rush Medical College and then on the faculty of the University of Illinois College of Medicine in the department of medicine.

I am a diplomate of the medical board of internal medicine. I served in the Army of the United States between the period from 1944 to 1947 as a specialist in internal medicine.

I am on the clinic staff of the Michael Reese Hospital.

I am a member of the Chicago Medical Society, the Illinois State Medical Society and the American Medical Association.

Q. Doctor, will you tell us briefly what your field of internal medicine comprises? Let me put it this way: Does it exclude surgery, for instance?

A. As a matter of fact, it is best defined by exclusion. It excludes such things as surgery, obstetrics, gynecology, dermatology. It is that branch of medicine that deals with diseases affecting the internal organs.

577 Q. Doctor, will you tell us if your practice embraces rheumatism and arthritic sufferers?

A. Yes., it does.

Q. Will you tell us what experience you have had, if any, in the treatment of patients suffering from rheumatism and arthritis?

A. I, like any other doctor practicing internal medicine, have seen many individuals whose complaints are the result of rheumatism and I have provided them with symptomatic reliefs from their pains since unfortunately no specific measures are had for the treatment of that particular condition.

Q. Doctor, will you tell us in your treatment of those patients suffering from the various forms of rheumatism or arthritis whether or not you have had occasion to prescribe or use salicylates?

A. Yes, I have.

Q. Doctor, will you tell us whether or not through your experience in the various hospitals and reading the literature you were familiar with the general practice of physicians practicing internal medicine whether or not they use salicylate therapy for the relief of pains and aches of rheumatism and arthritis?

Mr. Callaway: Objection. I think he should confine it to his own experience. I don't believe the man is in a position to speak for other physicians.

578 Mr. Gettleman: If the examiner pleases, I would like to say this: That one's knowledge in medicine is certainly based upon the literature that he reads, the visitations to the hospital and that work which is done in collaboration with other doctors which is the common way, I believe, that the practice of medicine is conducted in hospitals. I think the doctor is qualified to state what other doctors in similar situations would use. It is a matter of cumulative knowledge.

Trial Examiner Lipscomb: The objection is overruled.

Mr. Callaway: Exceptions.

The Witness: I believe I can state without hesitation that I have employed salicylates more widely than any other drugs and it is my belief that all doctors practicing in the field would probably make the same statement.

By Mr. Gettleman:

Q. Doctor, when you prescribe or use salicylate therapy would you call that a treatment?

A. Yes, sir.

Q. Will you tell us what you mean by a treatment?

A. A treatment is any measure which might be employed to relieve the complaints offered by the patient.

Q. Doctor, will you tell us what effect, if any, salicylate therapy has or exerts upon the pains of rheumatism or arthritis in your experience?

579 A. Salicylates enjoy the reputation of being an excellent analgesic and in my experience they deserve that reputation.

Q. Doctor, will you tell us that in those cases in which you have seen the analgesic effect of salicylates what effect, if any, would it have upon accompanying redness or swelling in those conditions in which pain was present?

A. Would you repeat that, please?

Q. In those conditions doctor, in which salicylate therapy is given and in which relief of pain and discomfort was obtained will you tell us what effect if any it would have on accompanying redness or swelling?

A. Not infrequently of course pain is present without redness or swelling. In those instances in which all of those conditions are found simultaneously it happens not infrequently that when pain subsides there is diminution of redness and swelling.

Q. Will you tell us what your experience has been in the administration of salicylate therapy when pain is subsided in reference to immobility of the part affected?

A. It is obvious that when there is a decrease in the pain the joint, if it is the joint which is affected, becomes more mobile. There is less disinclination on the part of the patient to move that part.

Q. Doctor, do you know of any definite or accepted standard for measuring the subjective aspect of pain?

580 A. To the best of my knowledge there is no objective means for determining the severity of pain.

Q. Doctor, would you say from your experience, based upon a reasonable medical certainty that it is necessary to remove the cause of a disease such as rheumatism or arthritis before it can be said that whatever therapy is employed is an effective treatment or remedy for that disease?

Mr. Callaway: Let me see if I understand that.

Trial Examiner Lipscomb: Please read the question back.

(The reporter read the question as follows:

("Question: Doctor, would you say from your experience, based upon a reasonable medical certainty that it is

necessary to remove the cause of a disease such as rheumatism or arthritis before it can be said that whatever therapy is employed is an effective treatment or remedy for that disease?")

The Witness: Decidedly not. It is not uncommon, as a matter of fact, to treat a condition without knowing the primary cause.

By Mr. Gettleman:

Q. Doctor, will you tell us if you know whether or not there is any cure for all forms of rheumatism or arthritis?

A. I am sorry to say that there is no known cure for the common, the primary types of arthritis.

581 Q. Doctor, will you tell us, based upon your experience and knowledge, whether or not there is any known drug or combination of drugs that will permanently and completely relieve the aches and pains and discomforts of rheumatism or arthritis or its various forms or their various forms?

A. It sometimes happens that if measures are employed to provide relief from pain, the pain does not recur when those measures are discontinued. However, it doesn't necessarily follow, of course, particular measures have been responsible for the disappearance of the condition which produced the pain originally.

Q. Doctor, are you familiar with the formula of Imdrin?

A. Yes, I am.

Q. Based upon your knowledge and experience, doctor, will you tell us whether or not if taken according to directions by an average, normal individual Imdrin would be harmful?

A. I am certain it would be harmless.

Q. Will you tell us, doctor, based upon your experience what effect, if any, the taking of Imdrin by a sufferer of rheumatism or arthritis in reference to his aches and pains, what effect Imdrin would have upon those aches and pains?

A. It should provide a measure of relief; the extent, of course, depending—

Mr. Callaway: Do what?

The Witness: It should provide a measure of relief;

582 the extent depending upon individual circumstances.

Mr. Gettleman: That is all.

Cross-Examination by Mr. Callaway.

Q. Doctor, your address is 3524 Lake Shore Drive?
A. 3520, sir.
Q. What, sir?
A. 3520.
Q. Do I understand that to be your home or office?
A. That is the home address.
Q. What is your office address?
A. 55 East Washington Street.
Q. Doctor, you are appearing here today as a voluntary witness, I believe. You weren't subpoenaed?
A. That is correct.
Q. Do you expect to be paid for your services in testifying as an expert witness?
A. Yes, sir.
Q. What do you expect to be paid?
A. A reasonable sum.
Q. Now, what do you consider a reasonable sum?
A. At the moment I don't know.
Q. What you mean, you have no idea what you expect to be paid?
A. I have an idea but until I consult with those who 583 are going to provide payment—

Mr. Gettleman: If the examiner pleases, I object to that. He just asked him one question. I don't have any serious objection to one but I think it is not germane to this issue what a reasonable sum is and going into that.

Trial Examiner Lipscomb: The objection must be overruled. It is the opinion of the Trial Examiner the question is a proper question and the cross-examiner is entitled to an answer to his inquiry. It is relevant as you know to the credibility of the witness.

Mr. Gettleman: He said he expected to be paid if the examiner pleases, and he said a reasonable sum.

Trial Examiner Lipscomb: He is entitled to know within a range what a reasonable sum is, I think.

By Mr. Callaway:

Q. Doctor, I didn't ask you what they would pay you. I asked what you expect to be paid. What do you expect to be paid?
A. That of course would depend in part on the amount of time I devoted to this.
Q. Well, say today.

A. Anywhere from one hundred to three or four hundred dollars.

Q. Doctor, do you remember the case a Federal Trade Commission case, in the matter of the Nutri-Vac Com-
584 pany, Docket 5314?

A. Do I remember what in connection with it particularly, sir?

Q. That was a case, I believe, in which Mr. Frank E. Gettleman, who is the attorney for the respondent in this case, was also attorney for the respondent and did you not testify as an expert witness for the respondent in that case on October 7, 1948?

Mr. Goding: If the examiner please, we object to this line of questioning unless it appears very clearly that there is something of really substantial value; The fact he testified previously in something that might relate to the issues here or unless counsel proposes to show that this is a professional witness. In quotes I use professional.

Trial Examiner Lipscomb: At the present time the examiner doesn't see the object of the inquiry but he will be glad to hear.

Mr. Brodkey: In further objection, if the examiner please, I wonder if it would not be in order for the trial examiner to suggest to counsel that which he can reasonably anticipate will be brought out on our redirect examination anyway right at the outset, how many times, if that is pertinent, he testified for us or if the case counsel alludes to is not the only other?

Mr. Callaway: They haven't let me go far enough
585 yet to know what the object of it is and I think the object is very pertinent and I will fast develop it.

Trial Examiner Lipscomb: You shall be licensed to go forward and the objection at this time is overruled.

Mr. Gettleman: May I say this, if the examiner pleases, that case involved the question of vitamins and minerals. I see no connection whatever—

Trial Examiner Lipscomb: You may renew your objection in a few minutes but I want to give the cross-examiner an opportunity to demonstrate the relevancy of his point.

By Mr. Callaway:

Q. Mr. Gettleman is correct in the statement that that case involved the question of vitamins and minerals, is he not?

A. Yes, sir.

Q. And you did testify as an expert witness for the respondents in that case, did you not?

A. I do believe so. I recall that I did.

Q. Now, I want to ask you, doctor, and I am reading from the record in that case, page 343—

Mr. Goding: Excuse me, I am sorry. I don't like to break in this way, but I suggest that this matter be canvassed off the record rather than have testimony adduced in this other hearing spread on this record. I suggest
586 that the trial examiner be given an opportunity to read it to see whether in connection with what counsel might say he proposes to prove through this line of inquiry whether this inquiry is admissible. I think we are going very far afield and I suggest it should not be spread on this record.

Mr. Callaway: The next question will show the pertinency of this inquiry.

Trial Examiner Lipscomb: You may go forward.

By Mr. Callaway:

Q. Doctor, I will ask you if Mr. Gettleman on direct examination did not ask you this question: "Doctor, will you tell us what background or experience you have in the field dealing with vitamins and minerals?" and was not your answer: "I am a specialist, I have had occasion to dispense those things a great number of times, countless times." Is that correct?

A. I don't recall but if the record states I have no doubt it is true.

Q. I refer you to the beginning of line 5 there—

A. As I say, I don't recall the exact incident.

Q. You are not denying that that did take place?

A. No.

Q. Are you a specialist in vitamins and minerals?

A. I am a specialist in internal medicine and of course one in the course of his practice in that particular
587 field does dispense vitamins and minerals.

Q. But the language there when he asked you what experience you had in vitamins and minerals you said I am a specialist, I dispense these things countless times.

Mr. Goding: I object to that. I think he is getting argumentative now. He already read it. It is in the record what the question and answer were.

Mr. Gettleman: He is a specialist.

The Witness: Yes, I am.

By Mr. Callaway:

Q. In the field of vitamins and minerals?

A. That was not my intent and I don't believe this indicates that. I said I am a specialist.

Q. Are you a member of the American Rheumatism Association?

A. No, sir.

Mr. Gettleman: Just a moment; just a moment. Mr. Callaway at times—well, at times—the answer to that, if the examiner pleases,—

Trial Examiner Lipscomb: The answer to what, Mr. Gettleman?

Mr. Gettleman: The whole line of questioning. He says "I am a specialist. I have had occasion to dispense those things * * *" referring to vitamins, "a great number of times, countless times."

Mr. Callaway: That is what I read.

588 Mr. Gettleman: He is talking about practicing internal medicine.

Mr. Callaway: This is cross-examination.

Mr. Gettleman: Whatever it is, let's not distort the facts. It has nothing to do with anything.

Trial Examiner Lipscomb: We have had enough of this at the present time.

Mr. Gettleman: I will renew the motion, if the examiner pleases, and ask it all be stricken. It is not germane to the issues. It is a definite and intentional attempt to distort what this witness testified to.

Trial Examiner Lipscomb: Off the record.

(Discussion off the record.)

Mr. Callaway: I might say in answer to Mr. Gettleman's objection to this testimony that it is only an excerpt of his testimony. I will be glad to offer the whole record of Dr. Weisberg's testimony in the Nutri-Vac case in which there is an exhibit which is included in this paper from which I was reading.

Mr. Gettleman: If the examiner pleases, I think it is very simple and fundamental that someone specializing in internal medicine dispenses vitamins and minerals. They can be given to people suffering from rheumatism or arthritis or any one of a number of cases. I reiterate that calling the witness' attention to that case in which

589 he testified has absolutely no bearing whatsoever in this case.

Trial Examiner Lipscomb: Mr. Gettleman, you may be right, it may have no bearing in this case. If it does not then the trial examiner will so conclude.

Mr. Gettleman: But I would like to know the cause.

Trial Examiner Lipscomb: I have before me a motion asking me to strike and I overruled that motion. Let the material remain in the record and the trial examiner will determine—

Mr. Gettleman: May I have the reason for your overruling the objection, if the examiner pleases? I don't understand the purpose of this.

Mr. Callaway: Let me explain the purpose.

Trial Examiner Lipscomb: I will be glad to give you my reason although I don't like to give reasons always.

Mr. Gettleman: Let counsel explain it to me then, if the examiner pleases.

Trial Examiner Lipscomb: You have asked for my reason. Out of all the talk that is going on here I might make a mistake quickly now. When the whole record is before me I can make a fair judgment. That is the reason. It can't do any harm. It might prevent error. It is caution on my part.

Mr. Callaway: At this point since he wants to know the reason I think it goes to his qualifications. I think a
590 doctor can hardly be a specialist in very many fields. I think in order to be a specialist in more than one field—my understanding of that question and answer that I read was that he was a specialist in the field of vitamins and minerals.

Trial Examiner Lipscomb: Now, gentlemen, unless you insist upon it—lets go off the record.

(Discussion off the record.)

Trial Examiner Lipscomb: On the record.

The Witness: I should explain that the subjects which we have been discussing are part and parcel of the practice of internal medicine. If I were a surgeon I would hardly make a statement in connection with the use of vitamins and minerals or salicylates but believe me when I say the intern who deals day in and day out—there may be some men who devote themselves exclusively to the treatment of arthritis or perhaps still further in the deficiency diseases, perhaps none devote themselves to the treatment of deficiency diseases but by and large it is the internist who handles the management of individuals suffering from deficiency diseases or arthritis; as was pointed out by coun-

sel these are simply sub-divisions of the specialty of the field of medicine. My contention is I am a specialist in internal medicine and as such I have had much experience in the prescribing of administration of particular prepa-
591 rations we are discussing.

By Mr. Callaway:

Q. You mean vitamins and minerals?
A. Even those, yes, sir.
Q. Doctor, there are certain doctors specializing in the field of gastroenterology—
Mr. Gettleman: I will object to that. I don't think that has anything to do with this case.
Trial Examiner Lipscomb: Objection overruled.

By Mr. Callaway:

Q. Doctor, there are internists specializing in gastroenterology?
A. Yes, sir, there are.
Q. There are internists specializing in heart diseases too are there not?
A. Yes, sir. Those I pointed out are sub-divisions of the specialties of internal medicine.
Q. And there are internists specializing in lung diseases, aren't there?
A. Yes, sir.
Q. And there are internists specializing in arthritic and rheumatic conditions, aren't there?
A. Yes, sir.
Q. Now, doctor, are you a member of the Chicago Rheumatism Society?
592 A. No, sir.
Q. Are you employed at the present time by the Veterans Administration here in Chicago?
A. Yes, sir.
Q. And in what capacity?
A. Chief of the resident training.
Q. Sir?
A. Chief of resident training.
Q. Does this particular branch of the Veterans Administration here in Chicago have an arthritic clinic?
A. No, sir.
Q. Sir?
A. No, sir.
Q. Do you know Dr. Black?

POOR COPY

A. Yes, sir.
Q. Do you know Dr. Centuri?
A. Yes, sir.
Q. What are their positions with the Veterans Administration?
A. Physicians employed by the Veterans Administration.
Q. What is that?
A. Dr. Centuri is chief of out patient service. Dr. Black, I don't know whether or not Dr. Black has an official title. I don't know that.
Q. Doctor, are you sure that the Chicago branch of the Veterans Administration with which you are connected
593 does not have an arthritis clinic?
A. There is no established arthritis clinic as far as I know. Arthritic patients are treated but there is not formal—
Q. Aren't there—
Mr. Goding: Let him finish.
The Witness: To the best of my knowledge there is no formal arthritis clinic.

By Mr. Callaway:

Q. Arthritic patients that are treated aren't they referred to Dr. Black or Dr. Centuri?
A. Not particularly to Dr. Centuri; not infrequently to Dr. Black.
Q. In fact, doesn't Dr. Black or Dr. Centuri between them treat all of the arthritic patients except for just a temporary relief or something like that?
A. No, sir.
Q. That is not true?
A. That is not true, that is right.
Q. Don't Dr. Black and Dr. Centuri, are not most of the arthritic patients of the Chicago Veterans Administration referred to Dr. Black and Dr. Centuri, one or the other or both of them?
A. As I said, certainly not to Dr. Centuri. Actually, I can't quote figures in regard to the patients who are referred to Dr. Black. I don't know.
594 Q. Do you know Dr. Cockrill?
A. Yes, sir.
Q. What is his position?
A. Chief medical officer.
Q. Would Dr. Cockrill know whether or not they had an

arthritis clinic at the Chicago Veterans Administration with which you are connected?

A. Yes, sir.

Q. Sir?

A. Yes, sir.

Mr. Gettleman: Excuse me, for your information there is a Hines Hospital that is not in Chicago but close to Chicago.

Mr. Callaway: I am familiar with that. I believe we had a witness treating arthritic patients at Hines Hospital testify in this case.

Mr. Gettleman: That is right, except he said it was in Chicago.

By Mr. Callaway:

Q. Now, if Dr. Cockrill says they have an arthritic clinic at the Veterans Administration you would accept that?

Mr. Gettleman: If the examiner pleases, I will object to that, giving suppositions that we don't know anything about.

Trial Examiner Lipscomb: Would you read the 595 question, Mr. Reporter?

(The reporter read the question as follows:

"Now, if Dr. Cockrill says they have an arthritic clinic at the Veterans Administration you would accept that?")

Trial Examiner Lipscomb: Objection overruled. I see no objection to his answering the question.

Mr. Gettleman: How do we know he said it, if the examiner pleases.

Trial Examiner Lipscomb: The doctor can answer yes or no.

The Witness: Might I instead elaborate just a little bit and explain the setup?

Trial Examiner Lipscomb: You may.

The Witness: Perhaps I can bring this to a quick close. As I pointed out, while Dr. Centuri may occasionally see arthritic patients it is my belief certainly that he doesn't see any great numbers. As I indicated, he is chief of the out-patients service. He is extremely well qualified, certainly, to see arthritic patients, although I don't believe that particularly falls within the scope of his duties at this time. Dr. Black sees a good many individuals suffering with arthritis. He too is very well qualified. I don't care to indulge on a play on words. The question has been asked: Is there a clinic. As I see it there is no formal

596 clinic which has been established. However, arthritic patients come to the Veterans Administration office. They are seen by any of the doctors engaged in working there. A good many of them are turned over to Dr. Black. If Dr. Cockrill chooses to call it an arthritic clinic I will go along with that. But as I see it because he treats these patients it doesn't constitute a clinic.

By Mr. Callaway:

Q. Your appointment at the Veterans Administration is a half time appointment?

A. Part time.

Q. Is it half time?

A. In a sense. It is loosely termed half time.

Q. Is it less or more than half time?

A. For the sake of the record it is half time. It fluctuates; somewhat more; somewhat less.

Q. In your half time appointment at the Veterans Administration do you not see the general run of patients coming there in internal medicine?

A. Yes, sir.

Q. Now, you served a residency I believe or internship at Michael Reese Hospital did you not?

A. Yes.

Q. When was that?

A. 1937 and 1938.

597 Q. Now, are you at the present time on any of the staffs of the Michael Reese Hospital?

A. Yes, sir.

Q. In what capacity?

A. Clinic staff.

Q. How much time is devoted to that?

A. One afternoon a week.

Q. Sir?

A. One afternoon a week.

Q. At what clinic is this?

A. Renal.

Q. What does that mean?

A. Kidney, loosely kidney clinic.

Q. Do you know Dr. Edward F. Rosenberg?

A. Yes, sir.

Q. Isn't he chief of the arthritis clinic at Michael Reese Hospital?

A. Yes, sir.

Q. Are you a member of Dr. Rosenberg's staff?

A. No.
Q. At the Michael Reese Hospital?
A. No, I work in one clinic there.
Q. Now, after completing your—was it a residency or internship at Michael Reese Hospital, or both?
A. Internship.
598 Q. After completing your internship at Michael Reese Hospital what did you do?
A. I went to the County Hospital for residency in medicine.
Q. What is that?
A. I went to the Cook County Hospital for residency in medicine.
Q. And you served there as a medical resident in 1938 and 1939 I believe, did you not?
A. No, sir.
Q. What time did you serve there?
A. 1939.
Q. Was this on Dr. Arkin's medical service?
A. Only in part for a brief—just one moment. I don't recall actually whether I served with him or not during that period. It was a rotating service in internal medicine.
Q. That was during the period of your residency there?
A. Yes.
Q. That was during 1939?
A. Yes, sir.
Q. That is what I understood you to say, just one year.
A. That is right.
Q. Then what did you do after that?
A. I entered private practice. I was at the same time on the clinic staff at Michael Reese. I was on the faculty at Rush Medical College.
599 Q. Now, wait just a minute. Let us take them one at a time. You gave two or three there. After you finished your residency at the Cook County Hospital were you not then given a staff appointment by Dr. Arkin on his medical service?
A. Not immediately thereafter, no.
Q. When did that staff appointment by Dr. Arkin on his medical service take place?
A. I don't recall if it was some months or a year later but one or the other.
Q. Now, how long were you on Dr. Arkin's medical service?

A. I don't recall. I believe it was 1940 to 1944 although I am not sure of the exact time.

Q. And I believe your service to Dr. Arkin's staff was Ward 65 there wasn't it in Cook County Hospital?

A. Yes, sir.

Q. That is the male medical ward in internal medicine, is it not?

A. Yes, sir.

Q. And you saw there I presume heart cases?

A. Yes, sir.

Q. Lung ailments?

A. Yes, sir.

Q. Diabetics?

A. True.

600 Q. Various other cases of internal medicine including some arthritics?

A. That is right.

Q. Are you at present affiliated with Cook County Hospital?

A. No, sir.

Q. When were you last on the staff at that hospital?

A. I was on the staff as I recall until I entered military service in 1944.

Q. Was there an arthritic clinic at Cook County Hospital while you were there?

A. I don't recall. I had nothing to do with that. There may well have been. I would suspect there was. If there were of course it was responsible for the care of arthritic patients on an out-patient basis.

Q. You had nothing to do with it if there was an arthritic clinic there?

A. No, sir. I would like to emphasize the point that such a clinic if it were established would be taking care of patients on an out-patient basis.

Q. Yes, I understand.

Mr. Callaway: Mark this for identification, please.

(The paper referred to was marked Commission's Exhibit No. 38 for identification.)

By Mr. Callaway:

601 Q. Doctor, I show you a photostatic copy of an article marked for identification as Commission's Exhibit 38 that was published in, I believe, the Journal of the AMA on gastroenterology in 1949 entitled "Carcinoma of

the Pancreas, A Clinical and Pathologic Study of Seventy-Five Cases." Are you the author of that article, doctor?

A. Yes, sir; very good, isn't it?

Q. It was good, on the subject. Doctor, isn't that the only article you had published in a reputable scientific journal?

A. Yes, sir.

Q. What did that article deal with? Does the title reveal what it deals with?

A. Yes, sir.

Q. It doesn't deal in any degree with rheumatism or arthritis?

A. Obviously not.

Q. Now, while you were on Dr. Arkin's staff at Cook County Hospital there were no special studies in regard to arthritis or rheumatism ever undertaken by that staff was there? Dr. Arkin was not particularly interested in the study of those diseases was he?

A. Oh, he was, definitely. It doesn't mean, of course, that he engaged in any particular research work.

Q. He didn't and the staff didn't while you were there?

602 A. That is right.

Q. Do you know Dr. R. W. Keeton?

A. Yes, sir.

Q. What position does he occupy?

A. He is head of the department of medicine at the University of Illinois College of Medicine.

Q. When did you first come in contact with Dr. Keeton?

A. In 1942 or 1943; I am not sure which; 1942 I believe.

Q. Was it when you got an appointment at the University of Illinois?

A. Yes, sir, that is right.

Q. What kind of an appointment was this?

A. I was placed in charge of the admitting clinic at the Illinois Research Hospital.

Q. What hospital?

A. Illinois Research.

Q. Now, what were your duties at the admitting clinic?

A. The instruction of students.

Q. And at the admitting clinic there did you not decide where the patients were to be sent, for treatment in different diseases?

A. The students did and I confirmed the findings.

Q. And at that admitting clinic you had all different kinds of patients I presume?

A. Yes, that is right. I should point out during an
603 earlier period I was also in the internal medical clinic of the Illinois Research Hospital.

Q. Did you have the same position there at the admitting clinic all the time you were connected with the University of Illinois Research Hospital? I mean, you were at the admitting clinic the whole time, weren't you?

A. Yes, sir.

Q. Doctor, were you ever authorized to deliver lectures to students or others at the University of Illinois on arthritis?

A. No, that didn't fall within the scope of my duties. I wasn't told that I was to lecture. Mine was a clinic in which one dealt directly with patients. In the terminology employed by the doctors mine was a "wet" rather than a "dry" clinic.

Q. Who is Dr. Irving Steck? Do you know Dr. Steck?

A. No, sir, I don't.

Q. You don't know Dr. Steck?

A. No, sir.

Q. Don't you know doctor that Dr. Steck has been head of the arthritic clinic at the University of Illinois Hospital there since 1934?

A. Sir, I don't know him. It is a very large institution. He took care of his work; I took care of mine. Our paths never crossed.

604 Q. Do you know Dr. M. M. Montgomery at the University of Illinois?

A. Yes, sir.

Q. What position does he hold?

A. I don't know.

Q. What work did he do while you were there?

A. As I recall, internal medicine.

Q. Wasn't he doing arthritis research work?

Mr. Gettleman: He said he didn't know.

Mr. Callaway: Let him answer.

The Witness: I don't know.

By Mr. Callaway:

Q. Well, it follows then I presume that you were never on the staff of either Dr. Montgomery or Dr. Steck if you don't know either one of them.

A. I do know Dr. Montgomery.

Q. But you didn't know what he does. What did you do at Rush Medical College?

A. You are going back quite a way. As I recall, I conducted a course which prepared students for the Cook County Hospital internship examinations and I taught cardiology to students and internal medicine, general internal medicine. I believe that is all, as I recall it.

Q. You were never authorized to deliver lectures to students on arthritis or rheumatism at Rush Medical College?

605 A. On those specific subjects?

Q Yes, sir.

A. No, sir.

Q. Now, isn't it true, doctor, that while you were connected with the University of Illinois Medical School or the Rush Medical School you did not specialize in arthritis or rheumatism?

A. That is true, although I handled such problems in the course of my daily duties.

Q. As a general run of internal patients coming to—

A. Such patients fall within the purview of the internists.

Q. Isn't it a fact, doctor, you never specialized in arthritis or rheumatism?

A. I took care of those patients.

Q. Doctor—

Mr. Gettleman: Let him answer.

Mr. Goding: Let him answer.

Mr. Callaway: I want an answer and I don't need a chorus from the other side here.

Mr. Goding: I think we are entitled at least to let the witness proceed and complete his answer. If counsel feels the answer is unresponsive he should move to have it stricken. I think it is very unfair to treat this witness this way. He is entitled to fair treatment and he should get it to see that this witness is protected in that regard.

606 Mr. Callaway: I certainly have not been unfair to the witness.

Mr. Goding: Let the witness answer, and not after one word gets out holler for—

Mr. Callaway: I think the holler came from the other side of the table.

Mr. Goding: It rightly did.

Trial Examiner Lipscomb: Gentlemen, gentlemen: hereafter address your remarks to me, both sides, address your remarks to me and I will try to rule on them, but let's not have any argument across the table. Let it come in a triangle. Address your argument to the trial examiner.

By Mr. Callaway:

Q. Now, doctor, the question was, isn't it a fact that you have never specialized in arthritis and rheumatism?

Mr. Gettleman: If the examiner pleases, I will object to that question for this reason: It was clearly stated by this witness that the treatment of rheumatism and arthritis is a specialty within the category of internal medicine. If one is a diplomate and properly qualified to practice in internal medicine that embraces the field of rheumatism and arthritis and I think it is agreed that there is no degree of expertism if it comes within that category, if it comes within the purview of internal medicine, and if a witness is properly qualified to practice internal medi-
607 cine, if he is a diplomate in that particular category that in itself shows that he is a specialist to treat and well qualified to treat rheumatism and arthritis and it doesn't make any difference whether he is authorized to make or give lectures or anything else about lectures.

I think we are going far afield, if the examiner pleases, and I submit that this whole line of examination is unfair.

Mr. Callaway: I am probing his qualifications, your honor.

Mr. Gettleman: You've got it.

Trial Examiner Lipscomb: The trial examiner assumes that the questions are not designed to disqualify the witness but to effect, if possible, the extent of, the strength or weakness of his testimony and therefore the questions are permitted and your objection is overruled.

Mr. Gettleman: May I just ask this question? Would the lack of lecturing on the subject or not writing papers on the subject be any indicia of the lack of qualification to treat rheumatism and arthritis?

Trial Examiner Lipscomb: The trial examiner is not on the witness stand to answer such question as that but it seems to me that should not necessarily, the fact that he did lecture in it might show special qualifications; it might; it might not. It is just one of those factors in a man's
608 history, however, that the cross examiner has a right to go into.

Mr. Brodkey: It also follows, your honor, that if one were to break down any recognized specialty he could without question break it down to the point of being ridiculous, to the point of being one who administers to arthritis or rheumatism of the left leg or the second finger joint or something of that kind. After all, we must use a little common sense in defining what kind of specialties we are concerned with and if the man says two things, first, that he is an internist of experience and second that beyond that he has had the experience with this particular type of thing, whether or not he has written on it, it seems to me he has answered properly.

Mr. Goding: There is a question here the doctor should answer.

Trial Examiner Lipscomb: Yes, sir, there is a pending question.

By Mr. Callaway:

Q. The question is, and I think the rule should be that the question should be answered directly and then any explanation he desires be given. The question is, isn't it a fact, doctor, you have never specialized in arthritis or rheumatism?

A. I have never limited myself to those branches.

Q. But that is not the answer to the question. 609 Have you ever specialized in arthritis or rheumatism?

A. In so far as they are a part of internal medicine, yes.

Q. Isn't it a fact that you have never been on the staff of the arthritic clinic of any hospital?

A. That is right.

Q. Isn't it a fact that you never had any paper or article on arthritis or rheumatism published in any reputable medical journal?

A. That is right.

Mr. Gettleman: Or any other journal.

Mr. Callaway: I didn't—

Trial Examiner Lipscomb: Now, gentlemen, remember the rule.

Off the record.

(Discussion off the record.)

Trial Examiner Lipscomb: We will have a five minute recess.

(Short recess.)

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Trial Examiner Lipscomb: The hearing will come to order.

The witness wishes to make a voluntary statement to one of his last statements. He has permission to do so.

Mr. Callaway: What was the last question?

(Record read.)

The Witness: I merely wanted to point out that a
610 great deal of stress has been placed on the fact that one may or may not have had an opportunity to lecture on arthritis in medical schools. As a matter of fact, there are two different methods of instruction. One is the so-called didactic method in which one without having patients at hand speaks on the subject for a group of students. The other method of instruction is one in which one makes use of a patient suffering with a particular disease, points out the findings and indicates what the necessary treatment is. Now, which of the two methods is more valuable is certainly a debatable point.

It is my own feeling that the method in which one makes use of available patients is more stimulating both to the students and instructor, not only is more stimulating but more apt to impart knowledge. However, I want to stress again the fact that one can instruct students in the treatment of arthritis without at the same time being called on to give so-called dry lectures on the particular subject. I wouldn't have undue stress placed on the matter of speaking before students.

May I add one word to that before you resume? It might be said in a sense that the payoff, of course, is in the treatment of the patient and I have concerned myself with the more practical aspects of the management of arthritis and rheumatism.

611 By Mr. Callaway:

Q. More practical aspects of what?

A. The management of patients with arthritis and rheumatism.

Q. Now, the management of patients with arthritis so far as clinics are concerned are done at an arthritis clinic are they not, so far as clinics are concerned. I am not talking about your private practice.

A. No, sir, that is true only in certain institutions, of course. In many institutions there is no separate treatment for the arthritic patients.

Q. Now, I believe you told us that you severed your connection with the University of Illinois when you went into the army in 1944, is that right?

A. Yes, sir.

Q. Doctor, do you remember making an affidavit in connection with the injunction that was sought in this case?

A. If I may anticipate, it has just occurred to me I was in error a moment ago. Actually, my work terminated with the University in 1944 but I was officially carried as a member of the faculty until 1947 at which time I returned from service.

Q. You were on army leave?

A. Yes, sir.

Q. As far as active connection it ended in 1944.

A. But officially I was a member of the faculty until 1947.

612 Mr. Callaway: Mark this the next exhibit, please.

Trial Examiner Lipscomb: The exhibit will be marked Commission's Exhibit 39.

(The paper above referred to was marked Commission's Exhibit No. 39 for identification.)

Mr. Callaway: And while I am thinking about it I would like to offer in evidence Commission's Exhibit 38 for identification.

Mr. Gettleman: If the examiner pleases, we will object to its being offered in evidence. I don't see what it has to do with the issues of this case whatsoever, the fact that someone wrote a paper on another subject, carcinoma, has nothing to do with his qualifications as an expert in treating rheumatism and arthritis.

Mr. Goding: Further, the witness has testified that there were no other papers. I think that was the point counsel wanted to make. We don't want to quibble but we just don't see the relevancy of this.

Mr. Callaway: Well, it shows the line of thinking he has been following and it certainly isn't rheumatism and arthritis.

Mr. Gettleman: Just a moment. That is unfair.

Trial Examiner Lipscomb: Just a moment. The trial examiner feels under the circumstances that he has heard sufficient argument on this particular point. The

613 objection is sustained.

Mr. Gettleman: Excuse us for the outburst.

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By Mr. Callaway:

Q. Doctor, I show you a paper marked for identification as Commission's Exhibit 39. Let us show it to counsel on the other side first.

Doctor, I show you a paper marked Commission's Exhibit 39 for identification and ask you if that is not your affidavit that was filed in support of the answer to the complaint in the United States District Court in Chicago seeking an injunction against Rhodes Pharmacal Company and others being the same as involved in this proceeding. Is that your affidavit?

A. You are asking me if this is my affidavit?

Q. Yes.

A. Yes, that is right.

Q. Now, doctor, I want to read a statement from that affidavit: "Affiant further states that he had a residency in medicine, Cook County Hospital, Chicago, Illinois; was on the staff of the Michael Reese Hospital, Chicago, Illinois; was a member of the faculty of Rush Medical College, Chicago, Illinois, from 1939 to 1942, and of the University of Illinois College of Medicine from 1942 to 1947, teaching internal medicine, including rheumatism and allied disorders; was an associate attending physician at Cook
614 County Hospital from 1941 to 1944, and was an officer in the Medical Corps of the Army of the United States from 1944 to 1947."

As I understand it, doctor, that sentence that I have read says that you were teaching internal medicine including rheumatism and allied disorders at the University of Illinois College of Medicine from 1942 to 1947.

Mr. Goding: Wait a minute, we object to that. In the first place I think that the sentence speaks for itself. If counsel wants to ask whether the witness stands on that statement that is all right, but to put a question as to counsel's understanding—

Mr. Callaway: I suspect you are right. I will withdraw that question.

By Mr. Callaway:

Q. Now, do you want to stand on the statement in this affidavit that you were teaching internal medicine including rheumatism and allied disorders at the University of Illinois College of Medicine from 1942 to 1947?

A. It is misleading, I grant you. It was done with no

intent to mislead. That is evident by the fact that I mentioned I was in the army from 1944 to 1947. Obviously I couldn't be in both places at the same time.

Q. I didn't know whether you could or not.

A. Actually—officially I was a member of the faculty of the university from 1940 to 1947. During the period I
615 was actually at the university I taught as I have indicated. I was on leave for a portion of that time, that is right.

Mr. Callaway: I offer that affidavit in evidence.

Mr. Gettleman: No objection.

Trial Examiner Lipscomb: The instrument tendered in evidence is received as Commission's Exhibit 39, there being no objection.

(The paper referred to, heretofore marked for identification COMMISSION'S EXHIBIT 39, was received in evidence.)

By Mr. Callaway:

Q. Doctor, you talked some about salicylates. Do salicylates affect any local anesthesia?

A. Certain forms do.

Q. I mean when taken internally.

A. No, sir.

Q. Sir?

A. No, sir.

Q. When taken internally do salicylates work by raising the threshold of pain?

A. That is debatable. I don't think anyone can provide a conclusive answer to that question.

Q. Well, how is the pain relieved outside of relieving the threshold of pain, I mean, outside of raising the threshold of pain?

616 A. I wouldn't know what the exact action is.

Q. Salicylates are rather rapidly excreted from the human system are they not, and to keep the relief from pain constant they have to be given continuously, do they not? Is that correct?

A. That sir, varies from patient to patient.

Q. Doctor, is the cause of rheumatoid arthritis known or unknown?

A. Unknown.

Q. Doctor, what are the pathological changes that ocur in muscles and connective tissues in rheumatoid arthritis?

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Mr. Gettleman: If the examiner pleases, we will object to that question. I do not believe it is germane to the issues. There is no allegation here that we claim that a change of the pathological structure takes place. I think it is far beyond the issues in this matter.

Mr. Brodkey: May I further add, that I think it far exceeds the scope of permissible cross-examination in that no such subject was touched upon in the direct examination directly or by inference.

Trial Examiner Lipscomb: Do you wish to make any response, Mr. Callaway?

Mr. Callaway: If the examiner pleases, if I understand the man correctly he said that salicylates relieve pain and redness, swelling, and I believe immobility. Now it is
617 my contention that those things are connected with the pathological changes and it certainly would be a pertinent question from that line of thinking.

Trial Examiner Lipscomb: Read the question, please, Mr. Reporter.

(The reporter read the question as follows:

"Question: Doctor, what are the pathological changes that occur in muscles and connective tissue in rheumatoid arthritis?")

Trial Examiner Lipscomb: The objection is overruled. Doctor, you may answer the question, please.

The Witness: I, sir, contend that I was misquoted.

By Mr. Callaway:

Q. Well, all right, go ahead, now, you are talking about my statement made?

A. Yes, sir. I was misquoted.

Q. Do I understand you now to say that salicylates will not have any effect on redness, swelling and immobility, say, in rheumatoid arthritis?

A. No, sir, I didn't say that either.

Q. Well, now, suppose you answer the question that I just asked you previous to that. Read it back to him, please.

Mr. Goding: If the Examiner please, I think for
618 clarity of the record the doctor should explain in which manner he was misquoted by Mr. Callaway, for continuity of the record.

Trial Examiner Lipscomb: If the doctor wishes to make an explanation he may do so otherwise you may on redirect examination unravel any confusion.

Mr. Goding: I merely suggest it for continuity of the record so we know right at this point when we are reading the record the matter about which he was misquoted.

The Witness: As I recall my words, of course, these are not exact words but they contain the meaning, I claim salicylates do relieve the pain of arthritis, and then I added when pain is relieved not infrequently there is a diminution of the redness and swelling and increased mobility. I didn't state it was the salicylates that would produce that effect.

By Mr. Callaway:

Q. What are the pathological changes that occur in the muscles and connective tissue in rheumatoid arthritis? That was the question that an objection was raised to which objection was overruled.

A. The changes in the muscles and connective tissue of rheumatoid arthritis are not as striking as the changes in the joints themselves. However, there are inflammatory changes in the tissues. There is an infiltration by cells
619 which are found in the presence of inflammation. There is some edema of those tissues. However, as I indicated, the major changes are found within the joint itself rather than in the surrounding tissues.

Q. The pathological changes, that is, at least among the pathological changes that occur in muscles and connective tissue in rheumatoid arthritis is inflammatory changes, as I understand you to say.

A. Yes, sir.

Q. Now, in order to correct the pathological changes that occur in muscles and the connective tissues surrounding the muscles in rheumatoid arthritis would you not have to correct the underlying causes of those pathological changes?

A. If it were possible, yes. As it happens it is not always possible.

Q. I don't believe you understand the question. Read it over to him.

(The reporter read the question as follows:

"Question: Now, in order to correct the pathological changes that occur in muscles and the connective tissues surrounding the muscles in rheumatoid arthritis would you not have to correct the underlying causes of those pathological changes?")

The Witness: Either that or give nature an oppor-
620 tunity to do so.

By Mr. Callaway:

Q. In other words, I understand you to say to correct the pathological changes that occur in muscles and connective tissues in rheumatoid arthritis the underlying causes of those pathological changes would have to be corrected?

A. It is extremely difficult to answer that with a yes or no.

Mr. Brodkey: I am going to object to the question on the ground that counsel is quite apparently attempting to tell the witness what he conceives the witness to mean by his former answers to the questions. Frankly, I don't think it is proper for him to ask the witness whether or not his understanding of the witness' testimony as he sees fit to interpret it is correct. The witness has testified and that is in the record.

Trial Examiner Lipscomb: Read the pending question, please.

(The reporter read the question as follows:

"Question: In other words, I understand you to say to correct the pathological changes that occur in muscles and connective tissue in rheumatoid arthritis the underlying causes of those pathological changes would have to be corrected?")

Mr. Callaway: I believe I will withdraw that ques-
621 tion.

Trial Examiner Lipscomb: The question is withdrawn.

By Mr. Callaway:

Q. Now, doctor, do these inflammatory changes frequently cause muscle spasm?

A. You are still speaking of the particular type of arthritis called rheumatoid arthritis?

Q. Yes.

A. Yes, they do.

Q. Just what is a muscle spasm, doctor?

A. It is a state of increased tonus of a muscle.

Q. What do you mean by tonus?

A. It is a state in which the fibers which constitute the muscle mass are in a state of increased contraction rather than in their relatively relaxed condition.

Q. Now, that muscle spasm in rheumatiod arthritis caused by the inflammatory changes about which we have

been talking is it true that, take an elbow joint, for instance, would the muscles on the inside pull and that pull bend the elbow joint, is that correct?

A. That is right.

Q. That is right?

A. That is right.

Q. Now, is it not the recognized method of relieving muscle spasm to splint and support the joint and give

622 it rest and removal from any strain?

A. That is one measure which is at times applied.

Q. Isn't that the preferred measure?

A. For that particular aspect of the disease?

Q. Yes, sir, the relief of muscle spasm.

A. It might be said that while that measure can be employed the application of heat at times without the splint is sufficiently beneficial so there is relief from a spasm. In other words, one doesn't rely on a single measure to obtain relief.

Q. That muscle spasm causes a stiffness of the joint, does it not?

A. A splinting of the joint?

Q. No, I am talking about the muscle spasm, would it not cause a stiffness of the joint in the bent position? In other words, if the muscles are pulled tight on the inside of my arm causing my arm to bend that causes that joint to be stiff while that is in effect, doesn't it?

A. While that is in effect, yes, sir.

Q. Now, what I was asking you about, did I understand you to say that the method of relieving that muscle spasm was maybe to splint and support the joint and give it rest and sometimes heat, is that correct?

A. Yes, in other words, the application of physical therapy in one form or another is an accepted form of treatment.

623 Q. Now, during the period of acute inflammation causing the muscle spasm would not the motion of the affected joint aggravate the underlying inflammation?

A. Now, if I may interject one note. I would like to bring out the fact that perhaps you are proceeding on the assumption that individuals with rheumatoid arthritis invariably have muscle spasm. Such is not the case.

Q. I wasn't proceeding on that assumption.

A. I presume you are referring to the small group, those individuals who have the muscle spasm apart from rheumatoid arthritis.

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Q. Let's talk about that group at present, all right.

A. No. As a matter of fact, prolonged immobility in a particular position is apt to cause a chronic deformity of the particular joint.

Q. That is true, very definitely. I agree with you on that, but during the period of acute inflammation would not the motion of the affected joint aggravate the underlying inflammation?

A. I would be inclined to say that would depend in large part on the amount of pain produced by such movement.

Q. Well, now, the pain produced by such movement would be the indication of the increased and aggravation of the underlying inflammation, is that what I understand you to mean?

A. What I meant to bring out is this: If the indi-
624 vidual so affected was relatively free of pain it would be my belief that some degree of motion would be beneficial rather than injurious.

Q. Even though you have an acute inflammation there and muscle spasm causing a stiff joint, during that acute inflammation period it is your belief that some motion would not aggravate the underlying inflammation?

A. Yes. As a matter of fact, one ordinarily requests the patient to put the joint through the range of motion which does not elicit pain.

Q. Does not what?

A. One would ordinarily have the patient put the joint through that range of motion which would not elicit pain.

Q. Now, if the pain or motion is less then the patient would be more likely to move the joint, is that correct?

A. Yes.

Q. Do I understand you to say that during the acute period of inflammation that motion of the affected joint would be advisable?

A. Rather than complete immobility, certainly.

Q. Now, doctor, let's differentiate between the exercise during the active stages, I am talking about as indicated by the acute inflammation, and the exercise during the period of subsidence which is for the purpose, as I under-
stand it, of restoring muscle tone and preventing it
625 from becoming permanently stiff. Now, movement and exercise is proper treatment during the period of subsidence after the acute inflammation period is over. That, as I understand you to say, is to prevent stiffness, is it not?

A. Right.

Q. But now let's differentiate from that. I am talking about the period of acute inflammation when the onset of the attack is at its height, do you recommend movement of the affected joint at that time rather than rest and splinting and heat?

A. I think we are essentially in agreement. It is a matter of phrasing it in the proper fashion. It is my belief that splinting is employed rather uncommonly.

Q. What is that now?

A. It is my belief that splinting is employed rather uncommonly. If you can for a moment conceive of a patient lying in bed because of let us say an acute attack of rheumatoid arthritis and at the same time you can conceive that patient possessing little or no pain there would be I assure you no actual indication for splinting and I don't believe that anyone would request those joints be splinted. As I indicated under those circumstances motion of the affected parts would be advisable rather than the contrary indicated, and I say even though we are dealing with a patient who is in the acute stages of the illness. In other words, one may use the degree of pain as a rough
626 measure of the degree of mobility to be permitted.

Q. And you think that by reducing that degree of pain by salicylates even though the swelling and the acute inflammation is at its height that reducing that pain would cause the patient to use the joint more, wouldn't it?

A. Yes. I might say that one under those circumstances will almost without exception give salicylates. One does it in order to provide relief from the pain and thereby he permits the patient to move those joints to a greater degree than he would otherwise.

Q. I just want to understand you correctly. That during the height of the inflammation in an acute attack of rheumatoid arthritis which has caused a muscle spasm which in turn has caused a stiffness of the joint, temporary stiffness of the joint—

A. Temporary.

Q. —you think that during the height of that onset it is advisable to require movement of that joint?

A. In the relevant absence of pain.

Q. And you think it is the thing to do then to give salicylates to reduce the pain so that there will be more movement of that joint, is that right?

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A. That is one of the desired effects.

Q. Now, doctor, what is the synovial membrane?

A. That is the membrane which lines a joint space.

627 It is the membrane which in effect creates the cavity which exists around a joint.

Q. Now, in cases of rheumatoid arthritis isn't it true that much of the swelling is due to the inflammatory thickening of the synovial membrane and connective tissue we might add?

A. Yes.

Q. Now, doesn't that swelling persist as long as those membranes and connective tissue remain thickened?

A. Yes.

Q. And the thickening is due to the inflammatory process?

A. Yes.

Q. And the cause of the inflammatory process is unknown?

A. Correct.

Q. Now, let's see, did you testify that there is no known cure for any kind of arthritis?

A. No. I believe I said any primary arthritis.

Q. What?

A. Primary arthritis.

Q. What do you refer to as primary arthritis?

A. Cause unknown.

Q. What?

A. That means that the cause is unknown.

Q. Well, there are certain types of arthritis, if I understand you, that are caused by infections that are known, isn't that right?

628 A. Oh, yes, surely.

Q. By the way, while we are talking about the stiffness, doctor, in rheumatoid arthritis you do get a certain stiffness and deterioration of the joint itself sometimes, do you not?

A. That is right.

Q. Ankylosis?

A. Right.

Q. It is not your contention that salicylates could affect that stiffness, is it?

A. Once it has been established, no, sir.

Q. Now, the kind of stiffness that you are talking about then that is affected by salicylates is the initial stiffness on the onset of the disease, is that correct?

A. That is right.

Q. And only that kind?

A. Not that resulting from ankylosis.

Q. Doctor, you were talking about salicylates for the relief of pain in arthritis and rheumatism. In what doses do you prescribe salicylates for that?

A. The smallest dose which produces the desired result.

Q. What is your experience along that line?

A. It can range from an occasional five grain dose up to sixty to ninety grains a day.

Q. Sir?

A. It can range from an occasional five grains up
629 to perhaps as much as sixty or ninety grains per day or even more.

Q. Now, a person who has rheumatoid arthritis, we will say, and he comes in with an inflamed elbow joint, swelling, redness, immobility of that joint and has intense pain as a result thereof, what dose of salicylate, what range dose would you give him?

A. In such a hypothetical case, and this is a guess on my part, of course, I would say a dose of anywhere from thirty to ninety or more grains a day.

Q. You don't think then that a dosage of nineteen or twenty grains of salicylate a day would affect much relief of the pain in that condition?

A. Anything is possible in medicine but I doubt that.

Q. Now, doctor, there are cases in which the pain is so intense, with rheumatoid arthritis now, there are cases in which pain is so intense that salicylates practically have no effect, aren't there?

A. Sure.

Q. Those type of cases you would have to give a narcotic, is that correct?

A. With some reluctance.

Q. I understand it would be with reluctance, I am sure.

Mr. Callaway: I believe that is all.

Trial Examiner Lipscomb: Off the record.

(Discussion off the record.)

630 *Redirect Examination by Mr. Gettleman.*

Q. Doctor, you stated that you were a diplomate in internal medicine, is that not right?

A. Yes, sir.

Q. Will you tell us what that means, doctor, what does it consist of?

Mr. Callaway: Wait just a moment. I don't know if that is redirect or not. That wasn't brought out by cross-examination.

Mr. Gettleman: I will show you he is an expert in his field.

Mr. Callaway: You seem to be worried about that.

Mr. Gettleman: Mr. Callaway, I am not worried about anything.

Trial Examiner Lipscomb: The objection is overruled. Proceed.

By Mr. Gettleman:

Q. Will you explain how one becomes a diplomate? What do you have to do?

A. Certain requirements are set up which one must meet before he becomes eligible for the examination offered by the particular board. It is required one devote three years of post-graduate study to his specialty or possess the equivalent thereof. If his credentials are passed on and approved by the officers of the board
631 he is permitted to take an examination which is offered in two parts. There is a written and there is an oral part. If he is successful in passing the written portion of the examination he is eligible for the oral examination. If he passes both he is certified as being qualified to practice the particular specialty, in this instance, internal medicine.

Q. Will you tell us if you know whether or not the appellation of diplomate is given to anyone specifically in the category of rheumatism or arthritis?

A. No, sir, it is not.

Q. And are the subjects of rheumatism and arthritis embraced within the examination that is taken as you described?

A. Very definitely. Those particular disorders are regarded as being a part of the field of internal medicine. It encompasses those particular diseases.

Q. Doctor, will you tell us whether you know there are comparitively many specialists that devote their time exclusively to rheumatism and arthritis in the City of Chicago?

A. I can not cite figures but I venture to guess there are exceedingly few.

Q. Could you tell us if you know whether or not the average cases of rheumatism or arthritis excluding the crippling ones go to the general practitioners for help?

Mr. Callaway: I am wondering if he could know that.

632 Mr. Gettleman: We will ask him if he knows.

The Witness: I believe I am qualified to answer. The statement has been made, not by me but the statement has been made, and I am sure it is an accurate statement—

Mr. Callaway: Just a moment. Now, you are not entitled to put in any statements by anybody else. Of course, that is a matter that should be told by the trial examiner and I am trying to usurp his prerogative. Am I not correct in that?

Trial Examiner Lipscomb: You are correct.

The Witness: I can rephrase that, sir. It is my belief that rheumatism is the most, probably the most prevalent disorder in this country today and it would be manifestly impossible to limit themselves in the treatment of arthritis to all such patients. The answer to your question is obvious. The vast majority must of necessity consult general practitioners or perhaps in fewer instances those men who practice the specialty of internal medicine. Only a very small number ever come to the attention of the man who devotes himself exclusively to the treatment of rheumatism.

By Mr. Gettleman:

Q. Do you also include arthritis?

A. When I say rheumatism I include the use of that term also.

Q. Doctor, would you tell us if you know whether
633 or not all hospitals have rheumatism and arthritic clinics?

A. They most certainly do not.

Q. Doctor, you were talking on cross-examination about ankylosis setting in. Will you tell us whether or not that condition is the predominant one in rheumatism or rheumatoid arthritis?

Mr. Callaway: Excuse me, will you read that to me, please?

(The reporter read the question as follows:

"Question: Doctor, you were talking on cross-examina-

tion about ankylosis setting in. Will you tell us whether or not that condition is the predominant one in rheumatism or rheumatoid arthritis?")

By Mr. Gettleman:

Q. Does that condition prevail predominantly or is it comparatively rare?

A. That is comparatively rare.

Q. Will you just describe to us what the general average complaint of those suffering from the majority of cases of rheumatism or arthritis are?

A. Yes. Rheumatism of course is a generic term which covers a variety of associated disorders. By and large, the patient who has rheumatism is one who complains of some rather indefinite vague muscular or joint pains.

Q. And you say those are the majority of cases?

634 A. Yes, they are, that is right.

Q. Would you tell us how those cases compare in number to those that are bedridden, for instance, doctor?

A. The vast majority of such patients are ambulatory and only a relatively small number confined to bed.

Q. Doctor, you were talking about giving nature a chance to set it.

A. Not to set in.

Q. To help. Will you tell us what you meant by that?

A. Very frequently the doctor, particularly when he is confronted by a disease for which there is no known cure, is compelled to resort to what is known as symptomatic treatment. He offers medication which provides relief from the discomfort caused by the disorder and he hopes—fortunately most of the time he is right—that sooner or later the natural restorative processes will correct the underlying condition.

Q. Is there any name for those cases, doctor, a medical term?

A. No all-inclusive name. It just so happens there are a variety of diseases we don't have—

Q. Would that condition be synonymous with self limited cases, if I may use that term?

A. Not necessarily. There are some chronic conditions which we haven't mentioned at all which are not self limited for which we don't know the cause but for which

635 we provide treatment. Others, however, are self limited.

Q. You tell us what you mean by that phrase "self limited", doctor?

A. There is a so-called natural course for the disorder. After it has been present for some time there is what appears to be a spontaneous regression or cure.

Q. Doctor, will you tell us about how many patients suffering from rheumatism and arthritis you have had occasion to treat and observe since you have gone into the practice of medicine?

A. There would be no way in which I could give you a figure which would be at all accurate. I can only say that I have little doubt but that each working day for a number of years I have seen one or more of such patients. As I indicated earlier, that particular condition constitutes probably the most chronic disabling condition in this country and anyone who is engaged in the actual practice of medicine is bound to see a great many such patients.

Q. Would you say that you see at least one or more a day, doctor, sufferers of rheumatism and arthritis?

A. On those days when I work.

Q. Now, you are also engaged in the private practice of medicine, are you not, doctor?

A. Yes, sir.

Q. And you have occasion to observe and treat 636 patients suffering from rheumatism and arthritis in your private practice?

A. Yes, sir.

Q. Doctor, will you tell us when you gave Mr. Callaway a range of salicylate contents whether that range would include the salicylate dosage that one would get from taking Imdrin per day?

A. Yes.

Q. Would you tell us this, doctor: would the salicylate content in Imdrin be sufficient to treat the majority of those ambulatory cases suffering from rheumatism or arthritis?

Mr. Callaway: Object to that unless he confines it to those he sees.

Trial Examiner Lipscomb: Read the question, please, Mr. Reporter.

(The reporter read the question as follows:

(Question: Would you tell us this, doctor: Would the salicylate content in Imdrin be sufficient to treat the majority of those ambulatory cases suffering from rheumatism or arthritis?)

Mr. Callaway: That he observed.

Mr. Gettleman: That you have observed.

Trial Examiner Lipscomb: Objection overruled.

The Witness: That would depend on the frequency of dosage, of course.

637 By Mr. Gettleman:

Q. The directions are two tablets before each meal with water, doctor.

A. That would give about twenty-one grains approximately per day. In all probability it would provide relief for a majority of patients, and I am considering all arthritic patients taken as a group when I say that.

Mr. Callaway: I don't think this is redirect examination.

Mr. Gettleman: You asked about the dosage. He is the one that went into the dosage specifically.

Mr. Callaway: I guess I may be wrong on that. I guess I did go into dosage.

By Mr. Gettleman:

Q. Doctor, will you tell us whether or not you know if there are sufferers of rheumatism or arthritis that don't see doctors at all?

A. Oh, I am sure there are very many who for one reason or another don't see doctors.

Q. Doctor, I think you stated that you were not familiar with the definite chemical action of salicylates, is that right?

A. That is right.

Q. And physiological action of salicylates, is that right, doctor?

638 A. What I meant to bring out was the fact that I don't know the manner precisely it acts to alleviate pain.

Q. But you did not testify—

Mr. Callaway: Just a moment, just ask him. Can that be anything but a leading question?

Trial Examiner Lipscomb: Off the record.

(Discussion off the record.)

Mr. Gettleman: That is all.

Recross Examination by Mr. Callaway.

Q. Doctor, do you know Dr. Richard H. Freiberg?
A. Only by reputation.
Q. What do you know of him by reputation?
A. He has worked extensively in the field of arthritis.
Q. Doctor, I show you a statement here I would like for you to read it, right there at the top down to there.
Mr. Gettleman: If the examiner pleases, we will object to that. He made no statement to the effect that he relied upon any literature.
Mr. Brodkey: Let alone Dr. Freiberg.
Mr. Gettleman: Let alone this gentleman in question.
Trial Examiner Lipscomb: What are you objecting to, counsel?

Mr. Gettleman: I am objecting to the question as
639 asked.

Trial Examiner Lipscomb: So far he hasn't asked a question.

Mr. Brodkey: So far he hasn't asked a question, only asking the doctor to read it. We have no objection to the doctor reading. When, as we anticipate, he asks a question attended on that, perhaps the doctor agrees—
Trial Examiner Lipscomb: Bide the question.

By Mr. Callaway:

Q. Have you finished it?
A. Yes, but there isn't—
Mr. Gettleman: Don't volunteer anything.
The Witness: I might indicate—
Mr. Gettleman: Don't indicate anything.
The Witness: May I later, please?
Trial Examiner Lipscomb: We will see.

By Mr. Callaway:

Q. You read that statement, doctor, did you?
A. Yes, sir.
Q. Would the statements that you made in your redirect examination here about a person with rheumatism, one who complained of vague pains in the joints, would that apply to rheumatoid arthritis?
Mr. Brodkey: Just a moment. Is there any possible relevancy in that question with the question which
640 preceded it and to which, I assume, by implication is

a part of it, the question of the doctor to look at a particular document. If there is it eludes us.

Mr. Callaway: Let's see if there is.

Mr. Brodkey: We object to it as irrelevant.

The Witness: I must confess—

Trial Examiner Lipscomb: The objection is overruled. You may answer the question.

The Witness: I am sorry, I didn't understand the question.

Trial Examiner Lipscomb: Will you read the question to the doctor, please?

By Mr. Callaway:

Q. You stated on redirect examination that the average person coming to see a doctor in regard to rheumatism was one who had vague pains in the joints.

A. Or muscles.

Q. Or muscles. I mean, rheumatism or arthritis. I just said rheumatism. Would that statement apply to rheumatoid arthritis as well as any other?

A. It may in the milder forms.

Q. Rheumatoid arthritis, isn't that, or do you know, isn't that the most prevalent form of arthritis?

A. Sir, it is not.

Q. What percentage of arthritic patients are af-
641 flicted with rheumatoid arthritis, if you know?

A. I am sorry, I don't know. I know that they constitute a small minority.

Mr. Callaway: I think that is all.

The Witness: May I at this moment then—

Trial Examiner Lipscomb: Do you have anything else?

Mr. Gettleman: That is all.

Trial Examiner Lipscomb: No, doctor.

(Discussion off the record.)

Mr. Gettleman: That is all.

Trial Examiner Lipscomb: You are excused, doctor.

(Witness excused.)

Trial Examiner Lipscomb: Off the record.

(Discussion off the record.)

Trial Examiner Lipscomb: The hearing is adjourned to reconvene in this room at 3:15.

(Whereupon, at 12:30 p. m. a recess was taken until 3:15 p. m., this day.)

642 Afternoon Session.

3:15 p. m.

Trial Examiner Lipscomb: Come to order.

DR. ARNOLD BLACK was thereupon called as a witness for the Respondents and, having been first duly sworn, testified as follows:

Direct Examination by Mr. Gettleman.

Q. Will you tell us your name and address, please?

A. Dr. Arnold Black. My office address is 3952 West Jackson Boulevard.

Q. And what is your home address, Doctor?

A. 5670 West Adams Boulevard.

Q. Are you licensed to practice medicine in the State of Illinois?

A. Yes, I am.

Q. Will you tell us something about your background from the time you finished college, what medical school did you go to, and bring us up to date, Doctor?

A. I graduated from the University of Illinois Medical School in 1940 and I interned at Cook County Hospital for 18 months. Shortly thereafter I entered service and I was in the Army Air Force for four years as a flight surgeon, and when I came out, I was a resident in internal medicine at Hines VA Hospital.

643 The first two years of that training was in general medicine and the last year I was senior resident in charge of arthritic service. I completed that training the end of 1948 and then went out into practice.

Q. Will you tell us, Doctor, what your practice consisted of?

A. My practice is limited to internal medicine. I work part time at the Veteran's Administration Regional Office at 366 West Adams Street and am designated there as chief of the arthritic clinic, although there is actually no formal clinic, but I see most of the arthritic patients there. I am assistant chief of the arthritic clinic at Michael Reese Hospital and I am acting chief of the arthritic clinic at Mt. Sinai Hospital.

Q. Doctor, will you tell us what societies, if any, you belong to?

A. Besides the Chicago Medical Society, I am a member of the Chicago Rheumatism Society which is a group made up of men whose interest is particularly focused on the rheumatic diseases.

Q. Are you a diplomate, Doctor?

A. Yes, I am certified by the American Board of Intern. Medicine.

Q. Will you tell us what that consists of, how does one become a diplomate, Doctor?

644 A. In order to become a diplomate, well, the requirements are variable, but for a man who graduated when I did they require five years, a total of five years training followed by a written and then an oral examination.

Q. You mentioned the Chicago Rheumatism Society?

A. Yes.

Q. Doctor, will you tell us, if you know, whether one has to be a diplomate in order to belong to that society?

A. No.

Q. What is that society consisted of?

A. It is composed of a small group of men whose attention is focused particularly on the rheumatic diseases. There are some men there who are orthopedic surgeons, and some who are general practitioners.

Q. When you mentioned rheumatic diseases, are you also including arthritis, Doctor?

A. Yes, of course.

Q. Doctor, will you tell us what medicaments you use in your attempt to relieve the pains, aches and discomforts of rheumatism and arthritis and its forms?

A. Well, for most of the musculo-skeletal diseases, I would say that the drugs we use most often are either aspirin or sodium salicylates, in other words, salicylates in one form or another.

Q. Would you tell us, Doctor, whether or not those
645 are used more universally and generally than any other medicine that you can mention in the relief of pains and discomforts in rheumatism and arthritis?

Mr. Callaway: Object to that. I think he ought to confine it to his own personal experience.

Mr. Gettleman: Regarding your own personal experience?

The Witness: I would say in my personal experience that I use more aspirin and sodium salicylates than any other medication in the treatment of musculo-skeletal diseases. If I may add a point, I don't think—well, I think the practice of medicine would be very difficult without the use of aspirin.

By Mr. Gettleman:

Q. Would you also include salicylates there, generally, Doctor, in your answer?

A. Yes, I think so.

Q. Doctor, when you give or dispense salicylates would you call that a treatment?

A. Oh, yes.

Q. Doctor, will you tell us, if you know, whether or not there is any single drug or combination of drugs that will cure the various forms of rheumatism and arthritis?

A. There is no one specific drug that will cure all forms of rheumatism and arthritis at all.

646 Q. Doctor, do you know of any medicine similar to salicylates that you employ that will give complete and permanent relief from the aches, pains and discomforts of rheumatism or arthritis?

A. Well, speaking broadly of all diseases, lumping all diseases into one, there is no specific drug that will give permanent relief.

Q. Doctor, in your dispensing salicylates for the relief of the aches and pains and discomforts of rheumatism or arthritis, will you tell us whether or not there is any effect when pain is relieved on the accompanying reddening or swelling that may exist?

A. Well, if you specify, for example, rheumatoid arthritis and if there is some relief from pain by the administration of salicylates which there practically always is, there will usually be an associated reduction in the muscle spasm and there may be some relief of the inflammation.

Q. And, Doctor, would you tell us what effect the salicylate therapy would have, just as you answered, regarding the mobility of the joint or muscle affected?

A. Well, when there is relief of pain, there is reduction in muscle spasm, and there is increase in mobility except where an ankylosis has existed previously.

Q. And, Doctor, will you tell us what you mean by ankylosis?

A. An ankylosis joint is one that is fused in which
647 there is absolutely no mobility. It is rigid.

Q. Will you tell us, Doctor, whether or not the majority of those suffering from rheumatism and arthritis are ambulatory patients as compared to those that are bedridden?

A. I would say that the majority are ambulants.

Q. By that is meant that they walk around, is that right?

A. Yes, of course.

Q. Doctor, when you interview or examine a patient that is suffering from rheumatism or arthritis, do you know of any definite standard whereby you can measure the pain that that patient is suffering?

A. No, I think pain is purely a subjective thing and it has to be evaluated from that standpoint.

Q. Doctor, will you tell us in those majority of ambulant cases that you have described that suffer from the pains, aches and discomfort of rheumatism or arthritis, what doasage of salicylates do you ordinarily prescribe?

A. Well, the dosage would vary with the individual. Some individuals need to take five grains of aspirin at irregular intervals, and I have given as much at 80 to 120 grains of sodium salicylate a day.

Mr. Gettleman: That is all.

Cross-Examination by Mr. Callaway.

Q. Doctor, does your treatment of arthritis and
648 rheumatism consist merely of dispensing aspirin or sodium salicylates?

A. Absolutely not.

Q. What does your treatment of patients with rheumatoid arthritis consist of?

A. Well, it involves a very extensive general management to include first of all certain type of medication which may be either—in addition to the salicylates we may prescribe gold or cortisome or ACTH. We also recommend rest in various forms, diet, physiotherapy when indicated, and certain types of rheumatoid arthritis, especially the Marie Strumpel type will respond to deep X-ray therapy.

Q. Also orthopedic measures, I presume?

A. Yes, that is correct.

Q. With what you have last said in regard to treatment of rheumatoid arthritis, would you call that adequate treatment?

A. Sir?
Q. Would you call that an adequate treatment?
A. You mean the entire—
Q. Yes, the entire program?
A. I think that according to the standards of acceptable treatment today that all these measures are to be considered to be adequate treatment.
Q. In other words, it would take those to be an adequate treatment, is that correct?
A. Yes, that is correct.
649 Q. You also, I guess, in many instance, provide iron for anemia that may accompany these conditions, too, do you not?
A. Not very often.
Mr. Gettleman: Just a moment, we didn't go into the causes of the disease. I think that is beyond the scope of the direct examination.
Mr. Callaway: Well, I don't think anemia is a cause of rheumatoid arthritis.
Trial Examiner Lipscomb: What is that?
Mr. Callaway: Do you still insist on your objection?
Mr. Gettleman: No, it is unimportant, but I just wanted to confine it if I could.

By Mr. Callaway:

Q. So that just merely dispensing salicylates could not be called an adequate treatment for rheumatoid arthritis?
A. That is correct.
Q. Now, Doctor, do you know Dr. Edward F. Rosenberg?
A. Very well.
Q. What connection does he have with the arthritic clinic at Michael Reese Hospital?
A. He is chief there.
Q. He is chief of the arthritic clinic at Michael Reese Hospital?
A. Yes, that is correct.
Q. Is he your superior?
650 A. Yes, that is correct.
Q. Do you work directly under him?
A. Yes. We are good friends, too.
Q. Do you consult with him in regard to cases that come up?
A. Of course.
Q. Do there sometimes come up cases that, after con-

lting with him, his judgment is taken as to what should done?

A. Of course.

Q. Now, Doctor, you said a minute ago, I believe, that ere was no definite standard for measurement of pain. hat may be a minor to one person may be a more severe in to another person, might it not?

A. Yes, of course.

Q. Now, take a case of rheumatoid arthritis where a an has a swollen, inflamed joint, the stage of the disease here there is an acute inflammation there. He also has uscle spasms causing that joint to be bent and intense in. Have you seen instances like that? What would you for a patient in that condition?

A. Well, assuming that the diagnosis is rheumatoid thritis a lot would depend upon the patient's general ndition as to whether or not I would recommend hospital- ation or treat him as a semi-ambulatory or ambulatory tient. I think generally, we would first of all get a com- ete workup on that patient and treat this patient during that time.

1 Q. What would that consist of?

A. The workup in a patient like that consists of an equate history and physical examination, blood count, inalysis, sedimentation rate, uric acid, X-rays, I think ose would be the minimum amount of work that would necessary and usually while that is going on, we treat e patient according to the indications. We usually give em salicylates and we may prescribe—

Q. In that condition, what dosage of salicylates would u give?

A. Well, depending to some extent on the size of the dividual I would give him at least 40 grains of aspirin day up to perhaps 80 grains of sodium salicylate a day, pending on the drug that I used.

Q. You have seen cases, I suspect, where the pain was intent with rheumatoid arthritis that no amount of licylates would have any effect to speak of, have you not?

A. Well, I can't agree a hundred per cent with that. I ink that we give all of these patients salicylates. Some them need some narcotics with it too. Sometimes the licylates alone won't help, but I think the two together uld potentiate the effects of each other.

Q. What else would you do for that patient, Doctor?

A. I would prescribe physiotherapy, perhaps in an attempt to straighten the joint out.

652 Q. What would that consist of?

A. Well, again, depending upon the acuteness of the case, it might consist merely of some hot packs, and some mild massage and a little bit of stretching on the part of the physiotherapist. It might also consist of some splinting at night and even intermittently during the day to prevent the joint from becoming more deformed.

Q. What is the splinting for?

A. Well, the splinting helps to rest the joint.

Q. Does the joint in that condition need rest?

A. Yes, it does.

Q. What else would you do for him?

A. Of course, it can't be splinted all the time. It has to be taken out at intervals and put through a range of motion. We may have to put traction on the joint. Sometimes cortisone or ACTH is used for these patients. Sometimes we give them gold. It is rather difficult to generalize without having a specific case in mind.

Q. Each case is an individual proposition?

A. Yes, that is right. If you wish, I can give you an example.

Q. Doctor, when salicylates are taken internally, do they affect any local anesthesia?

A. I really don't know. I don't think so, but I couldn't say for sure.

653 Q. You haven't noticed any local anesthesia when salicylates are taken internally?

A. You mean local gastric anesthesia? I don't quite understand your question.

Q. Well, now, for instance, you can't inject, if I understand it correctly, into an inflamed joint, some kind of a narcotic that will affect a local anesthesia of the pain at that point?

A. Not a narcotic, but an anesthetic agent.

Q. Do salicylates taken internally, they won't produce the same affect as an anesthesia injected locally?

A. No, the affect is different.

Q. Don't salicylates work on the preception of pain, that is, actually the preception of pain?

A. Well, nobody really knows how they act as far as point is concerned. There are various theories, and I think that may be one of the theories, but there is no—

Mr. Goding: There is no what?

The Witness: There is no absolute knowledge, no proof as to the actual action of the salicylates.

By Mr. Callaway:

Q. Now, salicylates are rather rapidly excreted from the body, aren't they?

A. Fairly rapid. I don't know the exact excretion time, but it is fairly rapid.

654 Q. And to have a continuous affect on the pain, you would have to give rather frequent doses, would you not, if the pain is severe, I mean?

A. Well, what do you mean by frequent?

Q. Well, suppose you have the condition that I talked about, about the man who had the highly inflamed joint. One dose of salicylates wouldn't suffice, would it?

A. No, we usually give patients like that medication about four times a day.

Q. And if that medication were stopped after the first dose, the chances are that the pain would return just like it was before?

A. Yes.

Q. I don't know whether you answered this or not, is the cause of rheumatoid arthritis known?

A. No, it isn't known.

Q. Is rheumatoid arthrtis one of the more common forms of arthritis or is it one of the more infrequent kinds, in your experience?

A. Well, the most common form in my experience, is fibrositis and I would say the next most common form is probably the degenerated forms of arthritis, osteoarthritis.

Q. Now, fibrositis and rheumaoid arthritis, are they two different things?

A. Yes.

655 Q. Then, after osteoarthritis, the degenerated forms, would not rheumatoid come next?

A. I think it probably comes in there. I am not sure about the exact statistics.

Q. Now, Doctor, what are the pathological changes that occur in muscles and connective tissue in rheumatoid arthritis?

A. That is a very extensive question. Well, in muscles we see some degenerative changes in the muscle fibre, and we see some collection, some small collection of lymph in various areas. In the connective tissue, there are some changes in the collagen noted.

Q. Now, in order to correct the inflammatory pathological changes that occur in muscles and connective tissues in rheumatoid arthritis, would you not have to correct the underlying causes of those pathological changes?

A. In other to cure it, you would, but the approach to the treatment of a great many diseases these days is not an approach to the etiology because we don't know the etiology. It is frequently symptomatic.

Q. Now, in order to correct the pathological changes, that is, the inflammatory pathological changes that occur in muscles and connective tissue in rheumatoid arthritis, you have to correct the underlying causes of those pathological changes?

A. Do you mean do you have to correct it because
656 of the disease?

Q. Well, do you have to remove the cause to correct the inflammatory pathological changes?

A. You can't remove the cause because you don't know what it is. You don't know what the cause of rheumatoid arthritis is.

Q. Can you correct it then?

A. Sir?

Q. Can you correct those inflammatory changes then?

A. I think you can alleviate them somewhat.

Q. You mean make the patient more comfortable?

A. Correct.

Q. Now, the patient may be more comfortable with the inflammation still there, may he not? That is, he may be made more comfortable and with the inflammation still there?

A. Yes, the basic pathological changes may still be there.

Q. Now, those inflammatory changes frequently cause muscle spasm, do they not?

A. That is one of the causes of muscle spasm.

Q. I mean, in rheumatoid arthritis?

A. Yes, that is one of the causes of muscle spasm in rheumatoid arthritis.

Q. Muscle spasm would bring a bending of the joint, would it not, muscles on one side would pull tighter than the muscles on the other side, and you would have a bent joint?

657 A. Yes, that is correct.

Q. Doctor, during the period of acute inflammation of the muscles and connective tissues causing the

muscle spasm in rheumatoid arthritis, would motion of the affected joints aggravate the underlying inflammation?

A. Yes, a constant motion would aggravate the situation?

Q. And if salicylates cut down the pain, would not the patient be more likely to move the affected joint than if the pain had not been cut out?

A. I think that there would be a little increase in motion if the pain were cut down, but there would also be a part of this that would be due to the increase in the muscle spasm because of the decrease in the pain.

Q. I don't know whether I understood you or not.

A. Well, the patient who has a deformed joint has so because of various things. First of all, there is severe pain of the joint itself, which causes a reflex muscle spasm and secondarily, there are the so-called rheumatoid changes in the muscle and in the connective tissue which would contribute to this thing, but the primary cause, I believe, is the pain in the joint itself, and if you were to relieve some of the pain you would relieve some of the muscle spasm.

Q. In other words, the muscle spasm is the cause of the pain or the pain is the cause of the muscle spasm, 658 which is which?

A. Well, in the beginning the pain causes the muscle spasm, and then it becomes a vicious circle in that the spasm causes more pain, more spasm.

Q. Doctor, what is the synovial membrane?

A. The synovial membrane is a membrane which lines the joint surface.

Q. Now, in the case of rheumatoid arthritis, isn't it true that much of the swelling is due to the inflammatory thickening of the synovial membrane and connecting tissue?

A. That, plus fluid in the joint.

Q. Now, doesn't the swelling persist as long as these synovial membrane and connective tissue remain thick?

A. I would say yes.

Q. And the thickening is due to the inflammatory process, is it not?

A. Yes.

Q. Your approach to the treatment of pain in rheumatoid arthritis is on an individual basis with the patients?

A. Yes.

Q. You can not say, as I take it, that a certain dosage

of salicylates will decrease the pain in any case of rheumatoid arthritis?

A. That is correct.

Q. So any preparation that contains a certain fixed
659 dose and is advertised for the relief of arthritis, relief for the pains of arthritis, that would work in some cases, and in some cases it wouldn't work, isn't that about right, Doctor?

A. That is correct.

Q. Now, do you know Dr. Barton?

A. Very well.

Q. What is his connection at Hines Hospital?

A. He is a consultant in rheumatic diseases, the arthritis ward at Hines.

Q. And you are in the arthritis ward at Hines?

A. I have no connection with Hines at all. I am working with the Veteran's Administration Regional Office downtown.

Q. I thought you said at Hines?

A. No, I received my training there.

Q. Oh, yes. You did train, as I understand it, at Hines, received some of your training at Hines?

A. Correct.

Q. Were you on the arthritic ward at Hines?

A. Yes, for over a year.

Q. When was that?

A. I spent three months there sometime during the first two years. I don't recall the exact dates. And then I spent all of 1948 there.

Q. Was Dr. Barton—

660 A. He was a consultant there at that time.

Q. When you were in training there?

A. Yes.

Q. Did you ever have occasion to consult with Dr. Barton in regard to arthritic cases?

A. Frequently.

Q. Did you have a high or low regard for his opinion in regard to treatment that should be given arthritis?

A. I have a very high regard for his medical judgment. We have some differences of opinion, but generally speaking, I hold him in very high esteem.

Q. I am sure you do as a man. I am not talking about as a man, I am talking about as a doctor.

A. I mean medically, too.

Q. And in the field of arthritis, also, is that right?
A. Yes. If I may interject a statement there, we have at least one radical difference of opinion.
Mr. Callaway: May I have just a minute or two?
Trial Examiner Lipscomb: We will have a five minute recess.
(Short recess.)

By Mr. Callaway:

Q. Doctor, you came out of the Army when?
A. The end of 1945, although my terminal leave didn't end until the spring of 1946.
661 Q. So far as being master of your own actions, it began in the Fall of 1945?
A. That is right.
Q. What did you do then, Doctor, after that period of time?
A. I became a resident of Hines. I started in January of 1946.
Q. What was the work that you did there at Hines when you first started?
A. I was receiving training in internal medicine. It was a three year program.
Q. In the general field of internal medicine?
A. Internal medicine, that is correct.
Q. Did you stay with that three year program until the end of the three years?
A. I stayed with it for two years, and the third year I became senior resident in the arthritis service.
Q. That was in 1948 that you became that?
A. That is correct.
Q. When did you first become connected with the Veteran's Administration, the downtown facility?
A. As soon as I left Hines, which would be the beginning of 1949.
Q. Is that a full time job now?
A. No, sir, it is part time.
Q. How much time?
662 A. Well, sir, I am authorized to put in 24 hours a week right now.
Q. Does it usually take that much of your time?
A. I usually put in that time if I can.
Q. How long have you been putting in that time, would you say?

A. I have been putting in 24 hours a week since about the beginning of 1950. In 1949 I put in 20 hours a week.

Mr. Callaway: I think that is all.

Mr. Goding: We only have two or three questions, I think.

Redirect Examination by Mr. Goding.

Q. Doctor, I think you said that the most common type of arthritis is fibrositis?

A. The most common type of musculo-skeletal disease is fibrositis.

Q. Fibrositis is a form of arthritis?

A. Well, that depends upon your classification. Generally speaking, the layman considers all musculo-skeletal diseases to be arthritis. Strictly speaking, we classify certain specific forms where there is pathology in the joint per se, as arthritis, and we consider fibrositis to be more of an extra-articular disease.

Q. Well, you wouldn't quarrel with the great num-
663 ber of medical witnesses produced by the Commission who have included fibrositis within the category of arthritis?

A. No, not at all. It is included in all text books. It is strictly splitting hairs.

Q. All right, Doctor. Now, with regard to fibrositis, do people who suffer from that classify it as ambulatory?

A. Yes, of course.

Q. In other words, it is not the serious condition that rheumatoid arthritis is, isn't that correct?

A. That is correct.

Q. Again I ask, it is not too clear what your answer was, fibrositis then, if it is classified as a form of arthritis would be the most common form of arthritis, is that correct?

A. Yes, that is correct.

Q. And the next most common form, I think you testified, was osteo—

A. Hypertrophic arthritis, that is correct.

Q. From your experience, Doctor, can you tell us whether people suffering from those two categories, that is, fibrositis and the hypertrophic arthritis, whether their conditions are such as would ordinarily or normally cause them to seek and procure medical treatment?

A. Well, I would say probably that most of them don't.

Q. Do not. Now, Doctor, from your experience, what would be the means by which people in that group who
664 are not seeking medical treatment would take for self-medication?

A. Well, they usually treat themselves with the ordinary home remedies consisting primarily of heat and aspirin.

Q. Would you include generally the salicylates?

A. Yes, I would.

Q. In such cases, Doctor, would you say that it reasonably could be expected that 20.4 grains of salicylates per day would tend to diminish the pain and discomfort, depending, of course, on the variables, but generally speaking?

A. I think that 20 grains of salicylates a day would be somewhat helpful.

Mr. Gettleman: Just one question, if the Examiner please.

By Mr. Gettleman:

Q. Doctor, the hypothical case that was given to you by Mr. Callaway regarding rheumatoid arthritis in which there was a spasm and splint used, that would not be the ordinary or more prevalent case that exists throughout the country, is it, or is that rare?

A. I wouldn't designate it as being rare, but it is not prevalent. Most of those cases are not ambulatory and we don't see too many cases of rheumatoid arthritis where they have marked involvement of just one joint with a lot of spasm.

Mr. Gettleman: That is all.

665 *Recross Examination by Mr. Callaway.*

Q. Do they have many joints involved, Doctor?

A. Well, usually there is multiple symmetrical joint involvement on a less acute scale. It is a chronic insidious disease.

Q. In many instances, it is in joints of the fingers, is it not?

A. Yes, sir, that is correct.

Q. And being in the joints of the fingers, it could have very acute inflammation there and very acute muscle spasm there and still be ambulatory, couldn't it? I mean, still be ambulant?

A. Yes, I think so. It is possible.

Q. Those types that we have been talking about, the treatment for all of them wouldn't be the same, would it?

A. That is correct.

Q. It wouldn't or would?

A. It would not be the same.

Mr. Goding: I am not sure I understand the question. Maybe the witness does or does not. I think there may be some confusion possibly when you say the conditions we have been talking about. I think you should specify. I have been talking about something different from what you have been talking about. You have been talking prin-
666 cipally about rheumatoid arthritis and I have been talking about the most common forms of arthritis.

By Mr. Callaway:

Q. All right, the kind that Mr. Goding has been talking about, the treatment wouldn't always be the same, would it?

A. Fibrositis, do you mean?

Q. Yes.

A. Generally speaking, the treatment is—well, let us say that it is much more uniform than in a case of rheumatoid arthritis.

Q. And then the type of cases that Mr. Gentleman was talking about, the treatment wouldn't always be the same, would it?

A. You mean rheumatoid arthritis?

Q. Well, he asked you something about the average number of cases, or something. I don't remember what it was. Do you remember what it was, Doctor?

A. No, sir.

Mr. Goding: He was comparing, I think, the comparitive rarity of rheumatoid arthritis as distinguished from the most common cause of fibrositis, isn't that right, Mr. Gettleman?

Mr. Gettleman: That is right.

By Mr. Callaway:

Q. Now, let's see. Your treatment wouldn't be the same for rheumatoid arthritis as it would be for fibro-
667 sitis? It wouldn't be the same for osteoarthritis as for either fibrositis or rheumatoid arthritis?

A. You couldn't specify that the whole treatment would be the same.

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Q. Now, those who received or who would receive, I believe you said that there was some classification in which Mr. Gettleman drew that you said, I believe, that 20.4 grains of salicylates per day would produce some measure of relief, or what did you say about that?

A. Well, he asked me if in the average case of fibrositis there might be some relief from about 20 grains of salicylate a day and I believe I said that there would be some help from that amount of medication.

Q. Now, if you can treat them as average cases, would 20 grains of salicylates per day furnish complete relief from the pains accompanying fibrositis, in an average case of fibrositis?

Mr. Goding: Don't answer that for a moment. I think it was my question, Mr. Callaway.

Mr. Callaway: Excuse me.

Mr. Goding: That is all right. I did qualify it realizing there are variables in the extent of pain with the individual and with the extent of the condition. Now, I think if Mr. Callaway wants to go into this he should also bear in mind the fact that I was talking, and the Doctor 668 responded, understanding full well what I was talking about, I think, the matter of the extent of the salicylates that are used in self-medication, not what the Doctor would be doing. I think that is very important.

Mr. Callaway: Now, would you mind going back there and reading my last question?

(The reporter read the question as follows:

"Question: Now, if you can treat them as average cases, would 20 grains of salicylates per day furnish complete relief from the pains accompanying fibrositis, in an average case of fibrositis?")

Mr. Goding: That is exactly the point I sought to make. The question now goes to the witness' treatment. My question didn't go to the witness' treatment. It went to self-medication. It went to self-medication and I think it should be fully understood that the Doctor hadn't talked about the extent of the amount of salicylates used when 20.4 grains was mentioned as a form of treatment by him, but merely as to the tendency toward relief from the self-medication with that amount.

Mr. Callaway: Now, would you read in the question again, please?

Mr. Goding: The question just read, I object to precisely as stated.

Trial Examiner Lipscomb: Do you object to the
669 Doctor answering the question, or are you lecturing the Doctor on the modifications you made in your questions?

Mr. Goding: I am objecting because the Doctor hadn't said that was his form of treatment.

Trial Examiner Lipscomb: The Doctor can understand the question and make an appropriate answer. Read the question, Mr. Reporter. The objection is overruled. I don't mean to be sharp. It may have sounded that way.

Mr. Goding: I understand, and again I don't want to quibble, but I think there is a faulty premise here. He is asking about his treatment about a matter the Doctor has responded to a question concerning self-medication. It wasn't his treatment.

Trial Examiner Lipscomb: I think the Doctor can understand the question.

By Mr. Callaway:

Q. Doctor, do you remember the question?

A. Yes, sir, I do. I would say that in the average case that that dosage would be a little low.

Q. So that that dosage at least could not be depended upon to furnish complete relief of the pains accompanying the average case of fibrositis?

A. Not complete relief, no.

Q. Now, Doctor, you said a minute ago, I believe, that the most common form of rheumatic diseases was
670 fibrositis. Now, fibrositis as you elaborated, does not include a disease of the joint, does it?

A. Well, again, we are going into hair splitting. It is not included under the classification of such, although it is listed in all the books on arthritis. Fibrositis is considered to be a disease of connective tissue. If you want to split some more hair, there is connective tissue in the joints, so therefore, fibrositis is in the joints, too.

Q. Doctor, isn't there two main types of joint diseases, rheumatoid arthritis and osteoarthritis?

A. Well, they make up a majority of the types of arthritis, but there are many other types, very many others.

Q. I know that, yes, sir, that is very true, but they are the two main types of joint diseases?

A. Numerically speaking, yes.

Mr. Callaway: I think that is all.

By Mr. Goding:

Q. I do think for clarification, this further question should be put to you. In the average case of fibrositis concerning which you have spoken and having in mind the variables of which I spoke, wouldn't it be reasonable to expect that pain—

Mr. Callaway: Wait just a minute, let's not ask a leading question. He is your witness.

Mr. Goding: I think it would be reasonable—

671 Trial Examiner Lipscomb: Off the record.

(Discussion off the record.)

Trial Examiner Lipscomb: On the record.

By Mr. Goding:

Q. Doctor, in connection with this matter of the self-medication for pain and discomfort from fibrositis to the extent of 24 grains of salicylates, isn't it fair to say that—

Mr. Callaway: I think that is bound to be a leading question.

By Mr. Goding:

Q. (Continuing.) —that in a great number of cases, the pain from the condition is relieved?

Mr. Callaway: I withdraw the objection.

The Witness: May I answer?

Trial Examiner Lipscomb: Answer the question.

The Witness: I would say that they obtain some help from that. I wouldn't say that it is completely relieved, but I would say they would obtain some help from that.

By Mr. Goding:

Q. By help, you mean relief, I take it?

A. Yes, of course.

Trial Examiner Lipscomb: Doctor, I think now you are excused.

(Witness excused.)

672 Trial Examiner Lipscomb: Off the record.

(Discussion off the record.)

Trial Examiner Lipscomb: On the record.

The hearing is adjourned to reconvene in this room in the morning at 10:30.

(Whereupon, at 4:20 p. m., April 4, 1951, an adjournment was taken to April 5, 1951 at 10:30 a. m.)

673 Room 802-A, U. S. Post Office,
433 West Van Buren Street,
Chicago, Illinois,
April 5, 1951.

Met, pursuant to adjournment, at 10:30 a. m.

Before:

Abner E. Lipscomb, Trial Examiner.

Appearances:

Joseph Callaway, Attorney for the Federal Trade Commission.

Frank E. Gettleman, Attorney for Respondent, Jerome H. Rose, 10 South LaSalle Street, Chicago, Illinois.

James B. Goding, Attorney for Respondent, J. Sanford Rose, 653 Washington Building, Washington, D. C.

Edward Brodkey, Attorney for Respondent, Rhodes Pharmacal Company, Inc., 10 South LaSalle Street, Chicago, Illinois.

674 Proceedings.

Trial Examiner Lipscomb: The hearing will come to order.

DR. LAURENCE H. MAYERS was thereupon called as a witness for the Respondents and, having been first duly sworn, testified as follows:

Direct Examination by Mr. Gettleman.

Q. Doctor, will you tell us your full name?
A. Dr. Laurence H. Mayers.
Q. Where do you reside, doctor?
A. 1242 Lake Shore Drive.
Q. You are a physician licensed to practice in the State of Illinois, are you not, doctor?
A. I am.

Q. Doctor, so that we may know your qualifications, will you tell us your background after graduating from medical school? What medical school did you go to, doctor?

A. Well, I went to four different schools. I didn't like any of them so I went to a different one each year. I started out going to the University of Pennsylvania because they had the only man—the first year was taken up with anatomy and the only man that ever wrote a text book on anatomy was at Pennsylvania, Dr. Piercoll, so
675 I introduced myself to him and told him why I came to the University of Pennsylvania and it flattered him to the extent that he gave me a job working for him. The second year in medicine is practically all physiology so I went to Western Reserve where they had two physiologists. One of them got the Nobel Prize not too long ago, Dr. McLeod. He died a short time ago. He was one of the founders of insulin.

The third year was taken up principally with bacteriology so I went to the University of Chicago because Dr. Jordan wrote the most outstanding text book on bacteriology, so I had my work under Dr. Jordan.

The fourth year was spent at the University of Illinois because the University of Chicago got me a job over there so I taught in physiology there for a year while I graduated.

After I graduated I went to St. Lukes Hospital to take my internship.

Mr. Callaway: When did you graduate, doctor?

The Witness: In 1915. At that time you didn't have to take an internship if you didn't want to. I spent three years as an intern in St. Lukes. Just as I finished the hospital I already had my commission in the Army. I was one of the first groups in Chicago to be taken into the Army.

I had a very interesting experience in France. I was over there about three years. I was sent to the army
676 of occupation after the war was over in Germany. So I had quite a preliminary, a lot of work before I started to practice medicine.

By Mr. Gettleman:

Q. What rank did you hold in the army, doctor?

A. I was awfully lucky in the army. I was a lieutenant three months and I was a caption three months and I was

a major three months and when I was to accept my lieutenant colonelcy they told me I would have to stay there four years so I brought my lieutenant colonelcy home with me, but I never accepted it.

Q. And after your army period did you come back to Chicago, doctor?

A. Yes.

Q. And what did you do then?

A. Well, I spent most of my time at the County Hospital and St. Lukes trying to learn something about medicine. I practiced about two hours a day.

Q. Did you teach at that time, doctor?

A. I got an appointment at the University of Illinois just as soon as I got back from the Army.

Q. What subject did you teach there?

A. Internal medicine.

Q. What hospitals were you connected with at that time?

A. I never was connected with any hospital but St. Lukes.

677 Q. Doctor, did you hold any other teaching position besides that one?

A. Well, I was at the University of Illinois for three years and then I went to Northwestern.

Q. And you taught at Northwestern?

A. Yes.

Q. What was your position there, what rank?

A. I was an associate professor.

Q. And was that in internal medicine also, doctor?

A. Yes.

Q. Doctor, will you tell us what medical affiliations, with what societies are you connected or a member of?

A. I am a member of practically all of them. I don't deserve any credit for it because they took me in without examination. I was in on them when they first started.

Q. Could you name some of those, doctor?

A. Well, the two outstanding ones we have in Chicago is the Society of Internal Medicine and the Institute of Medicine, and then these national societies came along, the American College of Physicians and now they got the—there was men in that society that were qualified as internal medical men, fellows that were doing X-ray, and chemists, it got a little varied so they then decided to have a society only for men who practiced internal medicine

that would be eligible to belong. They required a three day written and three day oral examination to get
678 into that society and again I was fortunate enough to be taken in. I was among the first. I think they took in twelve in Chicago and all men that ran the society were friends of mine so they took me in without examination.

Q. Are you a diplomate in that society, doctor?

A. Yes.

Q. Doctor, you are a diplomate in internal medicine, is that not right?

A. That is right.

Q. Can you tell us whether or not you were connected with the Mellon Institute for Industrial Research, doctor, and what your connection there was?

A. I was consultant there for twelve years.

Q. Doctor, did you specialize in rheumatism and arthritis?

A. Well, I specialized in chronic infections.

Mr. Callaway: In what?

The Witness: In chronic infections and the big majority of them were arthritis and rheumatism. Doctors have always had difficulty in explaining properly to the laity what these Latin terms mean. They give a Latin term and end it up with "itis" which means it is inflamed and when you can't see it and somebody says it is inflamed why you better take their word for it rather than try to tell them something you don't know.

679 Q. Doctor, when did you start to specialize, if you did, in rheumatism and arthritis?

A. In 1926.

Q. And you are retired at the present time, are you not, doctor?

A. I am out of practice. I haven't retired but I am out of practice; have been—it hasn't been quite a year.

Q. Doctor, will you tell us if you can how many patients you have taken care of, observed or treated since you went into the specialty of rheumatism and arthritis?

A. I think about six years before I gave up my practice they figured out that I had taken care of over 100,000 cripples.

Q. And do you know of anybody in Chicago that has taken care of that many patients of rheumatism and arthritis?

A. No. There was one in New York who has taken care of about twice that number, though.

Q. But so far as you know, aside from this doctor in New York, you think you have taken care of the second highest number in the United States, is that not right, doctor?

A. Well, if I would say so it is only because I don't know how many the other fellows have taken care of.

Q. But you have taken care of over 100,000?

A. Yes.

Q. Doctor, will you tell us do you know Dr. Philip Hench?

A. I have known him ever since he has been prac-
680 ticing medicine.

Q. Who is Dr. Hench connected with at the present time, doctor?

A. Mayo Clinic.

Q. Will you tell us when you met Dr. Hench and the circumstances?

A. 1924 or '25.

Q. How did you meet him, doctor?

A. Well, I was a guest of Dr. Will Mayo and he introduced me to a group of doctors there. I have known that group of doctors since 1924 or '5. Dr. Judd who was one of the most famous surgeons he ever had up there, I even had patients from there. He came down here to see me. In fact, he died here while I was taking care of him, unfortunately.

Q. The Dr. Will Mayo you mentioned was connected with the Mayo Clinic in Rochester, Minnesota?

A. Yes.

Q. Doctor, do you know who the head of that institution is at the present day?

A. Dr. Walters.

Q. Do you know Dr. Walters?

A. Well, he was my intern in St. Lukes Hospital and I took him by the hand and took him up there and introduced him to this group and they accepted him, and that is the way he got his job.

681 Q. What is his position there now?

A. Well, he owns it outright, I think, and runs it. He married Dr. Mayo's daughter and he is one of my most intimate friends and he is a fine fellow and doing one of the biggest jobs that has ever been done in this country.

Q. Doctor, while you were treating patients with rheumatism and arthritis did you ever exchange views with Dr. Hench?

A. Yes.

Mr. Callaway: I think that is objectionable. We want this man's views and not Dr. Hench's views, unless they want to put on Dr. Hench.

Mr. Gettleman: That is my next question. This all goes to his qualifications.

Trial Examiner Lipscomb: Objection overruled at present.

By Mr. Gettleman:

Q. The question was, doctor, did you have occasion to exchange views with Dr. Hench at Mayo's?

A. Oh, many times, over many years.

Q. Doctor, will you tell us that in your treatment of patients suffering from rheumatism or arthritis did you have occasion to use salicylates.

A. We always use salicylates.

Q. Just one more question prior to that, if I may go back. Dr. did you have occasion to have any papers
682 published regarding rheumatism and arthritis in any of the journals?

A. Yes, I published quite a few.

Q. And these you have here are in relation to rheumatism and arthritis?

A. That is right.

Q. Doctor, will you read us the titles, please, and tell us where they were published?

A. The first one is entitled, "The Concept of Arthritis," and the second—

Trial Examiner Lipscomb: Where was that first one published, doctor?

The Witness: Published in the Journal of Radiology in 1930.

Here is one on "Bone Regeneration." That is the last paper that I published, in 1945.

Mr. Goding: What journal, doctor?

The Witness: It is the only piece of work that I ever did do that nobody else ever did. Medical men can't show what they can accomplish on paper by pictures but surgeons can. This happened to be what could be accomplished with medicine without any surgery and we showed a man, a policeman's finger that was destroyed by an infection of the mouth. He was bitten on the end of the finger by a colored man and it shows how this finger was destroyed

and this is the first paper that ever was published. It shows the only two bones in the body that can grow
683 back that can be identified as original bones, the ends of the fingers and the ends of the toes. We have been cutting them off all these years but they will grow back and it shows them having grown back and it shows the man's hands normal.

Trial Examiner Lipscomb: What is that published in, doctor?

The Witness: "Bone and Joint Surgery."

By Mr. Gettleman:

Q. What is the next paper you had published, doctor?

A. The next paper is "Focal Infection and its Relation to Arthritis."

Q. Where was that published and the year?

A. That was published in 1932.

Q. What publication, doctor?

A. This appeared in "The Dental Digest."

Mr. Callaway: In what?

The Witness: "The Dental Digest," a dentists' publication.

By Mr. Gettleman:

Q. What is the next paper, doctor?

A. The next paper is the treatment of arthritis.

Q. Where was that published, and the year?

A. This was done out at Hines Hospital with a Dr. out there. This was published in "Industrial Medicine."

684 Q. Is that the list of the papers you have had published?

A. It is the list I have here. I had a printed list of papers that I published but I don't have it with me.

Q. Doctor, to go back now, have you ever had occasion to write any books on any medical subjects?

A. Yes, I wrote a book.

Q. Will you tell us the name of that book?

A. "What we Are and Why."

Q. What?

A. It is a poor title because people called it "Whither we are or why."

Q. What year was that published in, doctor?

A. I think in 1935.

Q. Now, doctor, to go back, I believe you stated that

you employed salicylate therapy for the relief of pain in arthritic cases, is that right?

A. That is right.

Q. Doctor, will you tell us the range in grains of salicylates?

A. The range in what?

Q. In grains of salicylates that you use.

A. That, of course—when aspirin came out which is a popular form of salicylate, it was put up in tablets. Well, a five grain tablet was about as much they could get in a tablet that people could swallow and at the time it came out there was a great discussion going on between
685 what they called the allopaths and homeopaths,—

Mr. Callaway: Wait just a moment; I don't believe that is responsive to the question. It is a discourse on something entirely foreign to the subject at hand, I believe. I object to that. The question that he asked him is what was the range of salicylates that he employed.

The Witness: I spoke out of turn, I suppose, but at that time they gave 400 to 600 grains of aspirin a day. That was the common dose.

By Mr. Gettleman:

Q. Doctor, will you tell—

Mr. Callaway: Wait just a moment. Did you give 400 to 600 grains—

Mr. Gettlemon: Wait till cross-examination.

Mr. Callaway: I object to that answer for the simple reason he said they did.

The Witness: I did it many times.

Mr. Callaway: You have done it many times?

The Witness: Many times.

By Mr. Gettleman:

Q. Doctor, will you tell us what doses did you dispense of salicylates in the early days?

A. Well, before aspirin came out in tablets that was the customary dose, four to six hundred grains a day.

Q. Was that in liquid?

686 A. Yes.

Q. And will you tell us what is the average dose that you used after the tablets came out, the salicylate tablets?

A. Well, I changed my dosage when the experimental

work was done and they found out there was only twenty-five to thirty grains that can be absorbed, it doesn't matter how much you give, the rest of it you can find in the stool, the rest of it passes out unchanged. It doesn't bother anybody.

Q. Doctor, in the ordinary cases of rheumatism or arthritis will you tell us whether or not you have an opinion as to the administration of twenty grains of salicylates per day for the relief of pain and discomfort of rheumatism and arthritis?

A. I think that is the most common dose.

Q. And do you believe that that dose would relieve the pains and discomforts accompanying rheumatism and arthritis?

A. Yes, we know it does.

Q. Doctor, is there any standard classification for the various types and forms of rheumatism and arthritis that you follow?

A. Well, we accepted them because we didn't know how to change them any better than were stated.

Q. Doctor, in treating rheumatism or arthritis the degree of pain is usually subjective, that is, what the patient tells you, is it not?

687 A. I didn't understand.

Q. The degree of pain that a patient suffers is subjective, is it not, doctor?

A. Yes.

Q. There is no standard method of measuring pain that any patient suffers?

A. No.

Q. Doctor, will you tell us if you know whether there is any definite opinion as to how the salicylates actually work as to the relief of pain?

Mr. Callaway: I object to that. He is asking if there is any definite opinion.

Mr. Gettleman: I will ask if he has an opinion.

Mr. Callaway: That is all right.

By Mr. Gettleman:

Doctor, do you have any definite opinion as to how or why and what manner physiologically or therapeutically salicylates relieve pain?

A. No, no idea at all.

Q. But you do know they relieve pain.

Mr. Callaway: Just a moment, that is a leading question.

Mr. Gettleman: I think he has answered. That is all, doctor. He will cross-examine you.

688 *Cross-Examination by Mr. Callaway.*

Q. Doctor, I believe you said that twenty-five to thirty-five grains of salicylates is all that can be absorbed. Then you wouldn't believe that a massive dose of salicylates, ninety to one hundred grains would be any more effective in relieving pain than one of twenty-five to thirty-five grains, is that what I understand?

A. We know from experience that that is true.

Q. Now, there is only a certain amount of pain that salicylates will relieve too, isn't there, doctor?

A. That is right.

Q. I take it that you have seen cases of arthritis in which no amount of salicylates would do any good as a practical proposition, haven't you?

A. Yes.

Q. In those cases would you sometimes use narcotics as a temporary measure, I mean?

A. I wrote an article that covered that pretty well, when I stated that the treatment for arthritis that we had a new treatment every week and we could keep it up for three thousand years, there are that many different remedies, directed at pain for arthritis.

Q. Well, you don't always use salicylates then for the pain, is that correct?

689 A. No, that is very true.

Q. You use other things?

A. That is right.

Q. Now, could this be true, doctor; you have said that pain is subjective, with which we agree, of course. What is a severe pain to one person would in all probability or might be not a severe pain to another one, is that not correct?

A. Yes.

Q. And a dose of salicylate that might relieve pain in one person might not relieve the pain in another person.

A. Oh, yes, that is true—particularly among lawyers.

(Discussion off the record.)

By Mr. Callaway:

Q. Doctor, is arthritis that is caused by syphilis, gonorrhea, tuberculous infection, are those types common?

A. Over fifty per cent. We don't know how much more over fifty per cent but we have always known that over fifty per cent of arthritics are either as a result of syphilis or gonorrhea but people never say my gonorrheal arthritis is better today or my syphilitic arthritis doesn't bother me today. They always say the word arthritis.

Q. I am written in some of these articles which you have written doctor. I notice this one on the Treatment of Arthritis which was published in "Industrial Medicine" in February, 1939 in which you talk about a remedy
690 which I believe you call Aciform II, is that correct?

A. Yes.

Q. In this paper you say this Aciform II contains the following, per cubic centimeter: formic acid, 0.0018 grams; 95% alcohol, 0.055 centimeters; iodine, 0.004 grams; sulfur, 0.0002 grams; terpene 0.0001 centimeters. That was the formula for this Aciform II.

A. Yes.

Q. And according to this paper you treated all kinds of cases of arthritis with that, atrophic arthritis, isn't that rheumatoid arthritis?

A. Yes.

Q. Hypertrophic arthritis, what kind is that, in another language? That is degenerative arthritis, isn't it?

A. As a rule, yes.

Q. Mixed types?

A. Yes.

Q. Gonorrheal, tuberculous and rheumatic fever?

A. Yes.

Q. And you got cures, didn't you, in practically all types of arthritis with this treatment?

A. We got some perfectly marvelous results, yes.

Q. Doctor, and I believe also you said that this treatment—I find here on the second page of this article where you say that this new product produces no anesthetic changes.

691 A. That is right.

Q. Then you say it provides immediate relief.

A. That is right.

Q. And then you state in another place, "In the involvement of the entire shoulder and arm, immediate re-

lief is usually provided by brachial block from the supraclavicular approach."

A. That is right.

Q. Isn't that an anesthetic proposition when you provide a brachial block?

A. Well, the brachial block, we inject it around the brachial block because it followed all of the nerves that the brachial plexus supplied. It is just like the facial nerve. Half of the facial nerve supplies half of the face above the eye and the other half below.

Q. Now, how does the block take place if it has no anesthetic action?

A. Well, now, the reason it has no anesthetic action is because there is no anesthesia; wherever you inject it with a pin or anything they continue to have a feeling of pain if you would go over that area with a pin, for instance.

Q. But it has anesthetic action on the pain that was there before, is that right?

A. Well, all we knew about it is that it relieved the pain. How it relieved the pain we hadn't the slightest notion.

Q. You did have a notion that it didn't relieve it 692 as an anesthetic, didn't you say that in here?

A. That is right, but how it relieved it we don't know.

Q. Well, how can you provide a block as you have stated it here without an anesthetic action? Isn't that a contradictory statement?

A. Well, it may be. I suppose if you would be very technical with me we think of the word block in terms of anesthesia, I think you are right about that.

Q. Now, then, doctor, I take it you quit using salicylates for pain when you got ahold of this Aciform II formula?

A. Well, this type of pain was so severe that there wasn't anything that would touch it.

Q. What type of pain?

A. It was in the very severe acute painful cases where they tried everything else and they didn't get any relief. We used it a great deal in facial paralysis where the only relief they ever got was by cutting the nerve and paralyzing the nerve. With this anesthesia pain would just disappear.

Q. That condition you are talking about, the paralyz-

ing of the face, is that an arthritic condition you are talking about?

A. That is another "itis."

Q. It is not an arthritic condition?

A. Well, it involves the joint of the jaw so they can't swallow or open their mouth.

693 Q. There were no bad side effects of this therapy?

A. None at all. That is what made it so popular.

Q. I am wondering, doctor, with the wonderful relief you talk about from pain in cases of all types of arthritis with no bad side effects why you ever used anything else after you found this?

Mr. Gettleman: If the examiner pleases, he just explained that those were rare cases in which the pain was so severe that nothing helped except that. They were not the ordinary run of cases.

By Mr. Callaway:

Q. Well, I am asking you why didn't you use it in the ordinary run of cases.

A. Well, the ordinary run of cases would get along very well without it. It was the desperately painful ones we used this Aciform in.

Q. You not only used it for the pain you also achieved cures with it?

A. That is right.

Q. Of rheumatoid arthritis?

A. That is right.

Q. And tuberculous arthritis?

A. That is right.

Q. And rheumatic fever?

A. Yes.

694 Q. And gonorrheal arthritis?

A. Yes.

Q. In fact, all kinds of arthritis?

A. That is right.

Q. And the response to it was just dramatic?

A. That is right.

Q. Doctor, is this formula Aciform II still used by you?

A. Well, I fortunately have quite a little of it but I got it from Germany and the man that made it about a month ago died.

Q. Well, it has been used by you up to a month ago?

A. Oh, yes, I have used it very frequently.

Q. In all acute cases?
A. Yes, sir.
Q. In chronic ones?
A. That is right.
Q. Now, this formula even where you had extensive bony spurring on the bodies of the vertebrae in addition to considerable ankylosis of the spine, where you had bony changes characteristic of atrophic arthritis in the knees and the ankles, the feet, the sacro-iliac joints, now, after all other treatments had failed you gave them Aciform II for one month and I believe the article states that the patient discarded both the crutches and cane; the spastic muscles were relieved immediately after the second
695 injection, the back is now straight and there is complete freedom of motion in all directions. You mean to tell me that this preparation where there is an ankylosis upon injection of this preparation after two treatments you got complete freedom of motion?
A. There is no ankylosis about this at all. If you got ankylosis the bone is grown together and you are never going to do anything but he—as far as ankylosis is concerned it was muscular spasm and couldn't possibly be bony ankylosis because nobody can change bony ankylosis unless by operation.
Q. That is what I was thinking but I want to show you here, doctor, talking about Case No. 20 in this paper to which I have referred, and correct me if I am reading wrong. You were talking about his condition that you found: "X-ray study showed extensive bony spurring on the bodies of the vertebrae in addition to considerable ankylosis of the spine."
A. That is very common, yes.
Q. "Bony changes characteristic of atrophic arthritis were shown on roentgenograms of the knees, ankles, feet, and sacro-iliac joints."
A. That is right.
Q. Then you talk about previous treatment. "Aciform II treatments were instituted on October 12, 1938, and were continued over the period of one month with treatments every fourth day. Injections were given along the course of the lower spine and into the gluteal regions as shown
696 in Figs. 1-B and 3. After a month of treatment, the patient discarded both crutch and cane. The spastic muscles were relieved immediately after the second in-

jection. The back is now straight and there is complete freedom of motion in all directions."

A. That is right.

Q. Well, now, you have complete freedom of motion in all directions where you formerly had an ankylosis.

A. Of the spine.

Q. Well, do you mean to tell me that ankylosis of the spine was completely removed by this treatment?

A. Not at all.

Q. I don't understand you.

A. But you can have ankylosis of the spine and not know it and not have any pain and your back will be perfectly straight and if you relieve the muscles attached to the spine and relieve that spasm that is what makes it straighten up.

Q. That is not ankylosis, is it?

A. Yes, one hundred per cent ankylosis.

Q. Did you not just say a while ago that no man can relieve ankylosis?

A. Well, I am still saying so but it is the muscles that are attached to those bones that are ankylosed that causes pain, and not the ankylosis.

Q. Now, doctor, I am interested in another paper 697 here which you have written called "Focal Infection and Its Relation to Arthritis," and I am reading to you a statement from the first paragraph at the top of page 2: "The three most common chronic disorders attacking mankind today are tuberculosis, syphilis, and arthritis. All three of them were described and classified in our medical literature many years before the organisms causing them were discovered."

Now, you are talking about arthritis there. All types of arthritis?

A. Well, all of these diseases that you speak of they are a very common cause of arthritis.

Q. You differentiate three diseases here, you say the three most chronic disorders attacking mankind today are tuberculosis, syphilis and arthritis. All three of them were described and classified in our medical literature many years before the organisms causing them were discovered.

A. That is right.

Q. Now, has the organism causing rheumatoid arthritis been discovered?

A. Has it what?

Q. Has the organism causing rheumatoid arthritis been discovered?

A. We would have to state that in another way.

Q. Well, now, I want to ask you if you haven't just said here in what I have read to you that the organism
698 causing arthritis has been discovered?

A. Well, in a tuberculous arthritis it has been discovered. In gonorrheal arthritis it has been discovered, and in syphilitic arthritis it has been discovered.

Q. But don't you make that statement without any reference, to arthritis as a whole, all types of arthritis?

Mr. Gettleman: Excuse me, if the examiner pleases, I suggest that the witness look at the article to refresh his memory because it might be manifestly unfair to take one sentence out from one spot and interrogate him without reading the context. I mean, there may be some qualifications. We don't know.

The Witness: I made the statement before that over fifty per cent of arthritis is caused by gonorrhea and syphilis and tuberculosis, more than fifty per cent of it, and then people say constantly that they do not know the cause of arthritis and we have known the cause of arthritis for practically fifty years.

By Mr. Callaway:

Q. All types of arthritis?

A. No, no, not all types. I am saying gonorrhea, syphilis and tuberculosis. We have known that.

Q. Now, in this article, "Focal Infection and Its Relation to Arthritis" you don't specify gonorrheal, syphilitic and tuberculous arthritis.

699 Trial Examiner Lipscomb: Doctor, do you want to refresh your memory?

Mr. Goding: I think the title itself demonstrates what the doctor is talking about, the title itself.

Trial Examiner Lipscomb: Then you may clear it up on redirect.

The Witness: I want to say that so many syphilitic arthritics, tuberculous arthritics and gonorrheal arthritics become secondary infected with sore throats and infected teeth and change the symptoms and that is what complicates arthritis so much in its treatment.

By Mr. Callaway:

Q. Doctor, don't you express the view in this article to which I have last referred that all arthritis is the result of infection?

A. That is right; that is right.

Q. And don't you say that the cause of infection is known?

A. Well, certain types of arthritis the cause is known as I have told you, and there are certain types that we don't know the cause; don't know anything about it.

Q. Well, I thought you just said that all types was the result of infection.

A. That is right. Only because we can't find the infection that doesn't mean it isn't infected. There are many infections that we have that infect the body that we haven't the slightest notion what organism is caus-
700 ing the infection but it is still an infection.

Q. Which infection is causing rheumatoid arthritis?

A. We don't know. In many of them we find out the definite cause by removing an infected tooth and examining that tooth and finding—

Q. That is rheumatoid arthritis you are talking about?

A. Yes, and we find the organism in this tooth. We take this organism out and inject it into an animal and it will produce the same joint changes as it does in the individual. With many of those cases the simple removal of that infected tooth will clear up the arthritis.

Q. That is streptococcus arthritis you are talking about, isn't it?

A. Well, it is a combination of streptococcus and maybe some staphylococcus and it may be mixed and we don't know which one. It is like being in a crowd of men and who hit him? we don't know.

Q. But you do know that some infections, streptococcus, staphylococcus hit him in the case of rheumatoid arthritis, is that right?

A. And it shows in the blood. We can determine by a blood examination what infection the patient has.

Q. That is rheumatoid arthrities you are talking about?

A. Well, that is all right, stick to rheumatoid.

701 Q. All kinds of arthritis.

A. That is right, and that is why it is infectious. We can tell by the examination of the blood because the

blood is reduced in amount and the only thing that will cause the blood change is infection. There is no reason for causing the change of blood unless it is infected.

Q. And you can cure any type of arthritis with Aciform II?

Mr. Gettleman: I will object to that, if the examiner pleases. He didn't say anything of the kind.

By Mr. Callaway:

Q. You have cured all types of arthritis with Aciform II?

Mr. Goding: Hasn't he gone into the subject quite thoroughly already?

Mr. Callaway: It is so interesting to me I would like to explore it.

The Witness: I said so in the book. You just read it to me.

By Mr. Callaway:

Q. That is right.

A. Why ask me about it then?

Q. You still stick by it?

A. I certainly do.

Q. You haven't changed your opinion?

A. Not a bit.

Q. Doctor, what is your connection with the Illinois 702 Eye and Ear Infirmary?

A. Well, I was appointed by Governor Horner to study infections and the eye infections are the same type of infections that infect joints. It is called iritis. It causes a great deal of blindness. We find many arthritics complicated with eye infections. They have both.

Mr. Callaway: May I inquire of respondents' counsel if they intend to offer these articles in evidence?

Mr. Gettleman: No.

Mr. Callaway: I believe I would like to offer these two in evidence myself then.

Mr. Gettleman: I am not offering them. They are my exhibits. You can't offer my papers.

The Witness: I would like to make this statement, that so many of the things that we have said about arthritis, particularly at the time I said there what I said about it is just about as old fashioned and ridiculous today as we were in traveling before the airplane came along. We have drugs now that stop this infection before it ever gets

started that give rise to arthritis, and if anybody ever sees the sulfa drugs and penicillin work it isn't going to be too many years we will never see it again. It is going out of business so fast it is unbelievable.

Q. All form of arthritis?

A. Every form of them.

703 Q. Rheumatoid arthritis?

A. Rheumatoid arthritis and the whole business because they will stop it before it ever gets started. It is timed over a long period of time that this infection does this work. That is all being eliminated by the rapidity by which this infection is cleared up now by penicillin and sulfa drugs.

Q. That includes degenerative arthritis?

A. That includes all of them and, well, in other words, we are never going to have syphilitic arthritis or gonorrheal arthritis.

Q. Or rheumatoid or osteoarthritis?

A. I think so. That is my opinion.

Mr. Callaway: That is all doctor.

I would like to know if counsel will permit the—

Mr. Gettleman: Forget about it. They are our papers and you are objecting to them. They are my papers and I expect to retain them, period; nothing controversial about it.

Mr. Callaway: Would you be willing for us to make photostatic copies of them?

Mr. Gettleman: No, sir.

Mr. Callaway: We will copy down the titles and get photostatic copies.

Mr. Gettleman: Are you through with this witness?

704 Mr. Callaway: Yes, sir.

Redirect Examination by Mr. Gettleman.

Q. Doctor, will you tell us whether or not these dramatic results that were spoken about in your papers was the cause of your treating more patients, the second largest number of patients in the United States, the relationship of those dramatic results you got and the tremendous practice and reputation you enjoyed?

A. Well, I think I would be conservative in saying that. More than half of my practice all my life has been taking care of doctors and doctors' wives and those are the men

that have sent me these patients from all over the country. That is why I treated so many from so many places. They were sent to me by my doctor friends and having taught medicine so many years these boys would be scattered all over the country and they knew the work I was doing and they sent these patients to me. That is the only thing that has ever flattered me in medicine and I think you almost make yourself ridiculous to talk about it, but I have always considered that when doctors come to me as patients that I am always flattered and I make myself ridiculous by saying so, but nevertheless I am.

Trial Examiner Lipscomb: One has a right to be flattered under those circumstances.

By Mr. Gettleman:

705 Q. Doctor, those cases that were written up were the rare cases—

Mr. Callaway: Don't lead him, please, sir.

Mr. Gettleman: Pardon?

Mr. Callaway: Don't lead him, please.

Mr. Gettleman: The question is a proper one, I believe.

By Mr. Gettleman:

Q. Doctor, in those cases that you have written up in which you have used Aciform II were they the rare kinds of cases or the more common ones?

A. Well, yes, they were much more rare than the common type of arthritis because they had such severe pain.

Mr. Gettleman: That is all.

Recross Examination by Mr. Callaway.

Q. Doctor, you don't say anything in this paper about them being the rare type of arthritis, do you?

A. Well, the doctors that I wrote that for in reading would know that is what type of cases I am talking about.

Q. Doctor, was this written for doctors? It is published in "Industrial Medicine"?

A. That is right, and that only goes to doctors.

Q. Did you ever submit this paper to the American Medical Association?

706 A. Oh, yes.

Mr. Gettleman: If the examiner pleases, he states where it was published. It would be silly to ask him if he ever submitted it to a hundred and one different magazines.

The Witness: My publications have been in a pretty big variety of medical journals.

By Mr. Callaway:

Q. Did I understand you to say that the pain was the indication of the severity of the arthritis, the amount of pain was the indication of the severity of the arthritis?

A. Yes.

Q. Sir?

A. Yes.

Q. Don't you have many cases of severe arthritis where there is little or no pain?

A. Yes.

Mr. Callaway: That is all.

Redirect Examination by Mr. Gettleman.

Q. Doctor, will you tell us whether or not you know if there are a number of people that suffer with the pains and discomforts of rheumatism and arthritis that never go and see or have medical care, if you know?

A. Well, the doctors think a comparatively small percentage go to doctors because about the time the pa-
707 tient gets ready to go to the doctor the pain they have disappears.

Mr. Gettleman: That is all.

Mr. Callaway: That is all.

Trial Examiner Lipscomb: Doctor, you are excused. Thank you for appearing here.

(Witness excused.)

Trial Examiner Lipscomb: Off the record.

(Discussion off the record.)

Trial Examiner Lipscomb: We will recess now until 3:15. Is that agreeable?

Mr. Gettleman: Yes, sir.

Mr. Callaway: Yes, sir.

(Whereupon, at 11:55 a.m., a recess was taken until 3:15 p.m., this day.)

708 **Afternoon Session.**

3:15 p.m.

Trial Examiner Lipscomb: Come to order.

DR. AARON ARKIN was thereupon called as a witness for the Respondents and, having been first duly sworn, testified as follows:

Direct Examination by Mr. Gettleman.

Q. Doctor, will you tell us your full name, please?
A. Dr. Aaron Arkin.
Q. Where do you reside, doctor?
A. 200 East Chestnut Street.
Q. Are you a licensed physician?
A. Yes, sir.
Q. In the State of Illinois, is that right, doctor?
A. Yes, sir.
Q. Doctor, will you tell us something about your background beginning with the graduation of medical school up to the present time?
A. Well, after getting my MD I got my Ph.D in pharmacology and pathology at the University of Chicago. Before that, I taught pharmacology at the University of Wisconsin for one year. I then became professor of pathology and bacteriology at the University of West Virginia for nine years. I then went to Europe and spent four
709 years at the University of Vienna, mainly in the first medical school known as the Michelbach Clinic.

I then returned to Chicago teaching medical subjects and doing research work since that time.

Q. Doctor, will you tell us are you a member of any medical societies or associations?

A. I am a member of about twelve; I would say at least twelve various scientific societies including the American Physiological Society; American Pharmacology Society; American Society of Pathologists and Bacteriologists; American College of Physicians; Chicago Pathological Society; Chicago Tuberculosis Society; Chicago Medical Society; Illinois State Medical Association; American Medical Association, and so forth.

Q. Doctor, would you state that your specialty is in internal medicine?

A. My specialty for the last, since returning from Vienna in 1927 has been internal medicine. Before that I specialized in pathology and bacteriology and for a time in pharmacology for about nine years.

Q. And you stated that you teach, is that not right, doctor?

A. Yes.

Q. Are you also engaged in the private practice?

A. I am professor of medicine at the University
710 of Illinois, and professor of medicine at the Cook County Post Graduate School and my main activity, of course, now is private practice, besides being on the attending staff at Cook County Hospital for twenty-one years.

Q. Doctor, will you tell us whether or not the fields of rheumatism and arthritis are embraced within the scope of internal medicine?

A. Yes, they are.

Q. Doctor, would you be kind enough to tell us your experience in the field of rheumatism and arthritis, your observation, treatment?

A. My experience in that field has been part of my work in internal medicine and at the County Hospital for twenty-one years I have seen many cases of various forms of arthritis as well as heart disease, tuberculosis, gastro-intestinal and other diseases. I have never specialized exclusively in arthritis but I have seen many cases in my years of practice both in the County Hospital and other hospitals and in my office.

Q. Doctor, will you tell us other than seeing and observing these cases have you had occasion to treat cases of rheumatism and arthritis?

A. Yes, sir.

Q. Will you tell us, doctor, whether in you regimen or routines of treatment of rheumatism or arthritis you
711 have had occasion to use salicylates?

A. Yes, I have prescribed salicylates as well as other medication in patients with arthritis, especially in cases of acute rheumatic fever.

Q. Doctor, will you tell us the purpose or the function that salicylates are used for in the treatment of those cases of rheumatism and arthritis in which you have used them?

A. I would have to specify the type of arthritis before I could answer that question. There are too many types of arthritis. In acute rheumatic fever we use salicylates in large doses because we know we have no other, no better form of therapy. We know that it has certain beneficial effects in rheumatic fever. We give large does, as much as fifteen grains every hour until they have had ten or fifteen grams or more in order to get results in this disease. We know in acute rheumatic fever it lowers temperature, it causes absorption of exudates and is today one of our chief therapeutic agents in acute rheumatic fever however which is a specific disease.

Q. And how about in some of the other forms of rheumatism or arthritis, doctor, in which salicylate therapy is used?

A. Other than acute rheumatic fever I would say there was only one disease I would consider salicylates really more or less especially effective and that is in gout —acute rheumatic fever and gout. In those two dis-
712 eases it has very definite therapeutic value.

Q. Doctor, will you tell us about those cases in which there are present muscular aches and pains that are ordinarily classified as rheumatism? Did you have experience in salicylate therapy with those cases?

A. Yes, I have.

Q. Doctor, will you tell us if you know the proportion of the ambulatory cases as compared to those that are bedridden of rheumatism—

Mr. Callaway: You mean in his experience?

Mr. Gettleman: Yes, in your experience.

The Witness: Well, I couldn't give you definite numbers because in the twenty-one years at the County Hospital the patients whom I saw in a large ward of which I was the attending physician, a ward of sixty to eighty patients they all were bed patients. In the office the patients were ambulatory or they wouldn't get up to the twentieth floor of the Marshall Field Annex. As to numbers I wouldn't venture to state. It would be impossible because I kept no records of numbers in that connection.

Q. Could you venture a guess, doctor, by virtue of what you have either read in the medical literature concerning the numbers, not in exact numbers but proportion, would the ambulatory patients outnumber those that are bedridden?

A. I would say in acute rheumatic fever. A patient
713 with acute rheumatic fever is a patient who requires bed rest and usually hospitalization because that carries with it a very high tendency of heart disease, eighty to ninety per cent sooner or later developing cardiac involvement. Those patients belong in bed and under medical care.

Q. And that is what usually happens in those cases?

A. In acute rheumatic fever. Which is a disease, by the way, largely of young adults, children and young adults.

Q. Now, how about some of the other forms in which pain other than that which you mentioned, pains, aches and discomfort are present, doctor?

A. In those I would use salicylates just as I would use any other drug to relieve pain but not with any idea of getting any specific curative effects from the drugs.

Q. That is right. I think we understand each other there. You would use salicylates in those cases for the analgesic effect that it might have to relieve the pain or aches or discomfort, is that not right, doctor?

A. I have used it, yes. I would use salicylates in some cases. In other cases I would use empirin or pyramidon and many other anti-pyretics. Salicylates lower temperature, they relieve pain but I couldn't limit myself to salicylates, nor would I expect any specific value from salicylates; simply, it might, in proper dosage—and I want
714 to specify that—in proper dosage, and under medical supervision be effective. The dosage is the important thing and that is an individual matter. I don't think one can specify the amount necessary to relieve pain or have a beneficial effect in any general group. I would have to treat each patient individually.

Q. In other words, the salicylates—

Mr. Callaway: Just a moment, don't lead him.

By Mr. Gettleman:

Q. Do you mean to tell us, doctor, that the salicylate therapy would vary? I just want to get your statement right—would vary with the individual case?

A. Yes, the same as any other drug. Naturally, a doctor would have to use his judgment as to how much a certain patient required to get beneficial effects either just for the relief of pain or if he has fever to lower tempera-

ture he might choose to use some other preparation. I wouldn't venture to generalize regarding its effectiveness unless I knew more about the patient. I would have to know considerable about the patient. There are too many causes for aches and pains.

Q. Doctor, will you tell us whether or not there is any standard that you know of to measure the severity of pain when you observe the patient?

A. In most patients we have to take their word for it. The pain threshold for different people varies considerably.

715 Q. That would be subjective, would it not, doctor?

A. Yes. We base that upon the history that we obtain from the patient to a large extent.

Mr. Gettleman: You may cross-examine.

Cross-Examination by Mr. Callaway.

Q. Doctor, in listing the societies that you belong to I didn't hear you mention the Chicago Rheumatism Society, or the American Rheumatism Association.

A. I am not a member of either one of those.

Q. You have never been specifically interested in the field of arthritis and rheumatism, I would say?

A. Not to the exclusion of other branches of internal medicine, no, sir.

Q. You have not written any papers as I understand it have you on arthritis and rheumatism, scientific papers?

A. I have published about fifty papers in bacteriology, cardiology, pulmonary diseases.

Q. But none dealing specifically with rheumatism and arthritis?

A. No publications that were exclusively limited to joint diseases.

Q. You talked about giving salicylates in rheumatic fever.

A. Yes, sir.

Q. I took it from what you said that you would give
716 salicylates in rheumatic fever up to the point of toxicity.

A. That is right, in acute rheumatic fever.

Q. In acute rheumatic fever, that is what I mean. And as soon as the patient becomes toxic you cut down the dose, is that right?

A. That is right, we cut down the dosage and the duration of that treatment would be based upon the clinical observation of the patient.

Q. Now, following an attack of acute rheumatic fever in which salicylates have been given doesn't the patient usually develop the cardiac involvement?

A. In a very high percentage of cases, sir. I would say in about ninety per cent of cases there is some carditis, as we call it, pan-carditis. It is an involvement not only of the heart valves but the heart muscle and the pericardial sac.

Q. And that is whether he has been given salicylates or not, is that right, doctor?

A. Yes. Salicylates lower temperature, relieve symptoms, have some beneficial effect upon the joint involvement where there is an acute inflammation, but does not prevent the cardiac involvement in that disease.

Q. What you have just said referred specifically again to an acute rheumatic fever?

A. Only in that disease; exclusively to that disease.

717 Q. Now, then, doctor, in the muscular aches and pains he asked you about, all muscular aches and pains are not rheumatic in their origin, are they?

A. No, sir. I would call that a very vague term.

Q. In your practice you have given salicylates, as I understand it, to relieve the pain in various types of arthritis, is that correct?

A. And in other conditions besides.

Q. And in other conditions as well?

A. Only because it is an analgesic along with many others.

Q. Of course, you have seen cases I take it in which salicylates would not as a practical matter have any effect on the pain?

A. I have seen many such cases.

Q. And, doctor, I take it from what you said in cases other than rheumatic fever you give salicylates for what relief of the pain it may afford?

A. Without any expectation of any specific effect. In fact, I might add here that salicylates are not specific for any disease, whether it be acute rheumatic fever or any other. It is not a cure of any disease.

Q. Take a case of rheumatoid arthritis, for instance, doctor, the temporary and in many cases partial relief of

the pain from salicylates is that what you would expect and all you would expect?

718 A. That is all I would expect in such cases.

Mr. Callaway: I think that is all.

Mr. Gettleman: That is all, doctor.

Trial Examiner Lipscomb: You are excused. Thank you.

(Witness excused.)

(Discussion off the record.)

Trial Examiner Lipscomb: Does the respondent have anything further to offer at this hearing?

Mr. Gettleman: No, sir.

Trial Examiner Lipscomb: Then pursuant to our previous understanding and agreement this hearing will adjourn to reconvene in New York City on April 25, 1951, and thereafter the hearing will adjourn and reconvene in Cleveland on May 22, and will then adjourn and reconvene in Chicago on May 23, 1951. Notices as to the exact place and hour of the hearings will be served upon the parties.

(Whereupon, at 3:50 p. m., Thursday, April 5, 1951, the hearing in the above entitled matter was adjourned.)

719 Room 500, 45 Broadway
New York, N. Y.,
April 25, 1951.

Met, pursuant to notice, at 2:15 P. M.

Before:

Abner E. Lipscomb, Trial Examiner.

Appearances:

Joseph Callaway, Attorney for the Federal Trade Commission.

James B. Goding, Attorney for Respondent J. Sanford Rose, 653 Washington Building, Washington, D. C.

720 Proceedings.

Trial Examiner Lipscomb: The hearing will come to order.

You may call your first witness, Mr. Goding.

Mr. Goding: I call Mr. Breiman.

Trial Examiner Lipscomb: Mr. Reporter, this is Mr. Abraham M. Breiman, 211—109th Avenue, Elmont, New York.

ABRAHAM M. BREIMAN, was thereupon called as a witness for the Respondents and, having been first duly sworn, testified as follows:

Direct Examination by Mr. Goding.

Q. Mr. Breiman, will you tell us the nature of your occupation?

A. Presently I am engaged as a consultant to various food and drug manufacturers, advising them as to what is required in compliance with the Food, Drug and Cosmetic Act.

Q. Will you tell us something of your background; first, educational background?

A. I received a Bachelor's Degree in Sciences from Brooklyn College in 1938, with a major in chemistry, biology and psychology.

I received a Master's Decree in Public Administration from New York University in 1942.

721 Q. Let's bring it more closely up to date. Were you employed by the Government?

A. Yes, I was employed as an inspector by the U. S Food and Drug Administration in New York.

Q. During what period?

A. From September 1943 until August 1946.

Q. What was the nature of your work as an inspector; tell us something about that?

A. My duties required that I make inspections of food, drug, cosmetic and device factories, with particular emphasis on sanitation, label review, weight checks, packaging, and other factors which come under the jurisdiction of the Food and Drug Administration.

Q. In connection with your work, did you conduct other investigations in addition to factory investigations, or inspections?

A. Yes. From time to time I was called upon to do special investigations and some of these required the conducting of consumer surveys to ascertain the reaction and opinions of consumers with regard to certain products, their composition, and labels.

Q. When was it, you say, that you left the Administration?

A. At the end of August 1946.

Q. You resigned yourself?

A. I did.

722 Q. And since then what have you been doing?

A. I have been engaged solely as a consultant—

Q. Along the lines you have already—

A. Previously described.

Q. Some few months ago were you approached by someone on behalf of the respondent, corporate respondent in this case, to conduct certain investigations?

A. Yes, I was.

Q. When was that?

A. I think it was—it was during the month of November 1950.

Q. By whom were you approached?

A. By yourself, Mr. Goding.

Q. What were you asked to do?

A. I was asked whether I would be able to conduct a consumer survey to find reaction to advertisements of Imdrin.

Q. In that connection did I turn over to you all of the exhibits, the advertising exhibits involved in this case?

A. Photostatic copies of the exhibits; that is right.

Q. What did you do with these?

A. I reviewed the entire group very carefully, and I found that they fell into three main groupings, based on their material.

723 I selected a representative one from each of these three groups, and these were held aside as a basis for the consumer survey.

Q. Without telling us what these conversations were, you and I had several extensive conferences or discussions?

A. That's right.

Q. Looking ultimately toward the conduct of a consumer survey?

A. Both in person and over the phone.

Q. Just a minute. With regard to the reactions of consumers, or the meaning—I will put it this way—the meaning of the advertisements involved?

A. That is right.

Q. What specifically did you do after you selected the three photostatic copies of the exhibits that you referred to; what did you do?

A. Well, we did have discussion as to how this would go about, and we decided that we would—that is, I would spend time in drug stores in the hope of meeting people who would come in to buy Imdrin, and then, of course, with their permission, to ask them the pertinent questions.

Q. Did you go into drug stores?

A. Yes. During December of 1950 I spent about a period of—well, over a period of two weeks, visiting various drug stores in the Metropolitan New York City Area,

724 in the hope of meeting purchasers of Imdrin.

Unfortunately, none came in to any of these stores while I was there.

Q. How long a period would you stay in each drug store?

A. I would spend a half day in each drug store; sometimes during the day and sometimes during the night.

Q. And during that entire period of about two weeks, you say?

A. That's right.

Q. You were entirely unsuccessful in contacting any person who purchased Imdrin?

A. That is right.
Q. In any of these drug stores?
A. That is true.
Q. And about how many drug stores were there?
A. I think I was in 13 drug stores during that period.
Q. In what area?
A. In the Metropolitan New York City Area; specifically in the Boroughs of Queens, Brooklyn, Bronx, and Manhattan.
Q. Following that, you reported to me your lack of success, complete lack of success in being able to contact Imdrin users by that means; is that right?
A. That is true; yes.
Q. And you and I had further discussions?
A. Yes.
725 Q. Will you tell us what was decided then?
A. We decided that we would have to try another approach, that is, to approach purchasers of drugs in drug stores, and we would try to approach these people who had purchased the main proprietary type of drugs.
Q. Let's go back a minute: Before you first went into any of these drug stores, were some questions prepared for submission to the interviewees, prospective interviewees, which would be put after they were to read these photostatic copies?
A. Yes. We worked out two questions.
Q. What were those questions?
A. The first was—well, I am sorry.
Q. Go ahead and tell what the plan was.
A. The plan was to submit these three exhibits to each of the consumers interviewed, ask them to read them, and when they had finished, I would pose both questions to them consecutively, and then await their answer.
These questions were, one: Do those ads mean that Imdrin will provide relief of pain of arthritis or rheumatism; or, two: Do these ads mean that Imdrin will provide treatment and cure of arthritis and rheumatism?
Q. You have already stated that during this first two-week period in which you went to the drug stores seeking purchasers of Imdrin, you just weren't able to put those questions; is that right?
726 A. That is right.
Trial Examiner Lipscomb: The Trial Examiner does not want to interfere, but I am wondering, I wish you

would explain to me the relevancy of this particular line of testimony?

Mr. Goding: The purpose of the testimony, if it please the Examiner, is to show the meaning to consumers of the ads involved in the case.

If your question goes specifically to the unsuccessful portion, it is to show an attempt to get answers from people who probably would be the best means, who would constitute the best means of demonstrating what these ads would mean, in the light of the whole case.

I have put it in in order to show that we have attempted that.

I might say, and while I say this I realize, of course, that anything I say doesn't constitute evidence—but I should like to make a statement, as a practitioner before the Federal Trade Commission, that I made, I personally made several attempts to have this work done in hospitals and clinics, and I was completely unsuccessful.

The purpose of this is to show that we sought to attain the very best sort of evidence as to the meaning of these ads.

Trial Examiner Lipscomb: What relevancy is the 727 fact that you sought to obtain? How does that throw any defense to the allegations of the complaint, or in any way affect this proceeding?

Mr. Goding: I think, if it please the Examiner, that it goes to the integrity and objectivity of the ultimate evidence that this witness will adduce.

Trial Examiner Lipscomb: All right. Go ahead.

Mr. Callaway: Wait just a minute. At this stage I might make suggestion: That I don't think this type of evidence—suppose he had found, even found users of Imdrin and interviewed them; that wouldn't mean that there would not be other users who might be misled by the advertising.

So I don't see the pertinency of it.

Mr. Goding: I think that is more a matter of argument. I would like to go on into it further, the additional affirmative evidence that we have.

Trial Examiner Lipscomb: Proceed.

By Mr. Goding:

Q. Following the discussion which you and I had, as you say, after the completion of this two-week period, tell us exactly what you did in connection with the consumer survey which you conducted?

A. As I stated previously, I had selected three representative exhibits, and it was decided between Mr. Goding and myself that we would approach the general type of
728 consumer who would come into drug stores mainly for the purpose of buying proprietary drugs.

Q. Excuse me. When you say "we," I didn't participate?

A. No. I say that, meaning I had decided to do it that way.

Q. You yourself?

A. I was the individual making the survey.

And I found the time, eventually, in February of 1951, to begin the additional part of the survey.

I was able to interview 13 people in one drug store, when the retailer told me that he felt that I was hurting his flow of business, and asked me to discontinue this.

I thereupon communicated with Mr. Goding and informed him of the fact that I was meeting resistance by the retailers, and we had a discussion again and decided that we would try to get a cross-section of consumers.

I was left on my own initiative as to how I would approach these people, how I would obtain consumers for this purpose.

I was successful in February 1951, of speaking to 150 people, and another group of 150 in April of 1951. These people consisted of factory workers, office workers, housewives, business men, some educated more so, some less so.

The results—

Mr. Callaway: 150 when, now?

The Witness: In February of 1951, and an addi-
729 tional 150 in April of 1951.

By Mr. Goding:

Q. Will you tell us the manner in which you approached these interviewees; where it was, that is, apart from the 15 I think you said—

A. 13.

Q. 13 that you interviewed in this drug store?

A. Yes.

Q. Where was it that you interviewed these other people?

A. A few were interviewed in factories, who are my regular accounts, or clients. Others I interviewed in their homes, that is, people I knew or were introduced to them by mutual friends. Others were in the offices of some of

my accounts. And the business men group, I was able to obtain by having a person I know in Jersey introduce me to owners of various retail establishments in Newark, New Jersey.

Trial Examiner Lipscomb: We will take a short recess.

(A short recess was taken.)

Trial Examiner Lipscomb: The hearing will come to order.

By Mr. Goding:

Q. Did you take the name and address of each person interviewed?

A. Yes. Except in two or three cases, in which the
730 individual specifically requested me not to mention their name, and I think in one case they actually refused to give me the name; but all the others did.

Q. Did you in any way make reference to the fact that there is an enforcement case pending involving these ads?

A. No. I approached this as an advertising survey.

Q. Will you tell us exactly what you said, or as closely as you can, just what you said to each applicant, and what was done, and the manner in which you recorded their responses?

A. I would approach the individual and ask them if they would be kind enough to read the three exhibits; and when they agreed, I would give them the three; and when they indicated that they had finished reading the three exhibits, I would then ask them the questions, consecutively; the questions which I have stated previously.

Q. Yes.

A. After they would give me their answer, I would check the appropriate column in my work sheet, and then I would ask them for their name and address. That concluded the interview.

Mr. Goding: I think we should make a reference to the exhibits.

Trial Examiner Lipscomb: Off the record.

(Discussion off the record.)

Trial Examiner Lipscomb: Back on the record.

731 By Mr. Goding:

Q. Will you tell us the number of each of these advertisements, the originals of which are in evidence; will you tell us the exhibit numbers, please?

A. Yes. They are Nos. 6, 8 and 13.

Q. As I understand it, you say that you asked each individual to read, and in that connection, I should like to ask you: Did you yourself read Exhibit No. 6, which is a radio continuity?

A. No. I asked the interviewees to read all three exhibits.

Q. And then, as I understand it, after they completed reading, did you ask them if they completed their reading?

A. Yes.

Q. And then, as I understand it, you put these two questions; is that right?

A. That's right.

Q. Will you tell us what the totals were for the February part of this survey?

A. The results of the February part of the survey were, of the 150 people interviewed, 137 stated that these ads meant that Imdrin would provide relief of pain, and the balance, 13, said that the ads meant that Imdrin would provide treatment cure.

In percentages these are 91.3 per cent who thought these ads meant, implied pain relief for Imdrin, and 8.7 per
732 cent implied that the ads meant that Imdrin would provide treatment and cure of arthritis.

Mr. Callaway: How many said they would provide treatment and cure?

The Witness: 13 of the 150.

By Mr. Goding:

Q. Will you tell us the results of your April survey?

A. In April 1951, I interviewed another 150 people, of whom 136 stated that the ads meant Imdrin would provide relief of pain of arthritis and rheumatism, and 14 stated that these ads meant that Imdrin would provide treatment and cure of arthritis and rheumatism.

In percentages, the figures were 90.7 per cent of the people interviewed who stated that these ads meant that Imdrin would provide relief of pain of arthritis and rheumatism, and 9.3 per cent stated that the ads meant that Imdrin would provide treatment and cure of arthritis and rheumatism.

Q. I should like to ask you this: These sheets to which you have been referring, and I think you called them your work sheets—

A. Yes.

Q. (Continuing.) —were the results obtained in each interview noted on these work sheets?

A. Immediately after the—at the conclusion of the interview.

Q. For the record, will you describe how you set
733 up these work sheets, physically?

A. Each sheet is divided in two vertical, and each vertical half is then subdivided into columns: For name and address in one, and alongside each of those spaces there is a column headed "Pain Relief," and the column next to it is headed "Treatment and Cure." Depending on the answer I got, I would check the appropriate answer column as to the name of the person.

Q. I see on here, and I think you have stated it orally, that under the name of each party interrogated appears the address?

A. That is right.

Q. Is that the address of that party, of each party?

A. That is right; the person's name and address.

Mr. Goding: I think that is all.

Cross-Examination by Mr. Callaway.

Q. Mr. Breiman, have you ever had arthritis?

A. No, sir.

Q. Do you know what the symptoms of any kind of arthritis are?

A. From what I have read and heard, it is a painful—pain is one of the symptoms.

Q. What other symptoms?

A. I have heard swelling.

734 Q. What else?

A. Inflammation. That is about all that comes to mind.

Q. Stiffness?

A. I have heard that some people couldn't walk erect if they had arthritis.

Q. You have seen folks with gnarled hands?

A. That's right; yes.

Q. That have had arthritis?

A. Yes.

Q. You didn't tell us what your reaction was of the 13 people that you interviewed in one drug store.

A. I could tell you that.

Mr. Goding: I am sorry. I think he did say that he took their replies.

Mr. Callaway: Just a minute—

Mr. Goding: Mr. Examiner, I think I am entitled to straighten out any misunderstanding on the part of counsel in the formation of his question, where the basis is erroneous in the record. I think the record will show that the witness has testified that he recorded, or he took the answers of 15 people in a drug store—

The Witness: 13.

Mr. Goding: (Continuing.) —13 people in a drug store, and then was caused to leave the drug store.

Mr. Callaway: Is he objecting to my cross-exam-
735 ining this witness; is that what he is objecting to?

Mr. Goding: No. I stated the basis of my objection.

Trial Examiner Lipscomb: I don't know what is before me. Honestly, I don't.

Mr. Callaway: Let's start all over again.

By Mr. Callaway:

Q. Mr. Breiman, have you given us the result of your interview with the 13 people on the drug store?

A. They have been included in the 150 during the February 1951 interview. I can give you the breakdown if you wish.

Q. Let's see; I thought you took a cross-section—I thought that 150 at the time was a cross-section of consumers.

A. That is true. And I also included those 13.

Q. How do you know they are a cross-section of consumers? What category did you put them under?

A. Consumers.

Q. I know. But you broke your consumers down in cross-sections, didn't you?

A. Yes. But I didn't mean that to be all-inclusive.

Q. These surveys, other than those 13 that you saw in the drug store were, you said, in factories where you had your account, did I understand you to say that?

A. That's right. They engaged me as consultant.

Q. They gave you permission to make the survey there?

736 A. That's right.

Q. They introduced you around?

A. No. I went about it myself. After securing the permission, I approached the individual employee during their lunch hours and rest periods.

Q. On your own?

A. On my own.

Q. At least you were working in a friendly atmosphere there?

A. Oh, yes; that's true.

Q. And then homes of people you knew, that was a right friendly atmosphere too?

A. Yes.

Q. How many of these people who gave answers to these surveys were in homes of people you knew?

A. Directly or through mutual friends?

Q. Well, I am taking the words you used.

A. Well, directly, I would say about 25.

Q. What was the reaction of that 25?

A. I would need some time to actually total them up.

Q. They were practically all—

Mr. Goding: Excuse me. Let him look through the records and answer it. If Mr. Callaway wants you to. I don't know if he wants you to spend the time.

My purpose in interpolating was to make sure that
737 the witness was concentrating on one thing or the other; his records or the question. I think, maybe, you might indicate, Mr. Callaway, if you want him to spend time on it.

Mr. Callaway: I want to know about it.

(Witness calculates.)

The Witness: I was a little low in the number of people I knew directly. They add up to 41 who said that the ads meant to them that it was a pain relief of arthritis and rheumatism, and 4 said it was a treatment and cure of arthritis and rheumatism; 41 against 4.

By Mr. Callaway:

Q. These friends of yours, they knew what you were doing, I guess?

A. No. I told them it was a consumer—that is, they saw what I was doing physically. But I represented it to them as a consumer advertising survey.

Q. None of your friends knew your business well enough to know what you were doing?

A. No.

Q. Those friends don't even know what kind of business you are in?

A. They know what business I am in. But this is not one of the usual things I do.

Q. You kept it a secret, then?

A. I kept the matter subjective and as honest as possible.

738 Q. How many of those that you interviewed had arthritis?

A. I did not ask the question.

Q. You didn't ask the question?

A. No, I did not ask the question.

Q. I thought that was what you started out to find out first.

A. No. I wanted the consumer reaction to these advertisements, not as to whether or not they had any disease.

Q. I know. But the consumer reaction, shouldn't it come from those to whom the advertisements are addressed?

Mr. Goding: Wait a minute. I am going to object to this. I think the witness, by his last answer, has indicated what his function in the picture was. Any questions that, in a sense, and in a large sense, imply argument as to the strength of the results of this survey, I think more properly should be left for argument to the Examiner and to the Commission, not to, or with the witness.

Mr. Callaway: Is he objecting to the question?

Mr. Goding: Yes.

Trial Examiner Lipscomb: What is the question? Will you read it.

(The reporter read the questions and answers as follows:

"Question: How many of those that you interviewed had arthritis?

"Answer: I did not ask the question.

739 "Question: You didn't ask the question?

"Answer: No, I did not ask the question.

"Question: I thought that was what you started out to find out first.

"Answer: No. I wanted the consumer reaction to these advertisements, not as to whether or not they had any disease.

"Question: I know. But the consumer reaction,

shouldn't it come from those to whom the advertisements are addressed?")

Trial Examiner Lipscomb: Strike just the last question.

Mr. Callaway: You are sustaining his objection?

Trial Examiner Lipscomb: Not sustaining; only in part to the last question, which is a statement.

By Mr. Callaway:

Q. Were you not seeking, Mr. Breiman, consumer reaction to Imdrin advertisements from the people to whom the advertisement was addressed?

A. May I say that the exploratory survey in December, I did try to find purchasers of Imdrin in the drug stores, but was unsuccessful.

When we worked up the idea that we would try to get a cross-section of consumers, it was decided that we would just ask the two questions based on the reading of the 740 exhibit advertising.

Q. Then your survey does not reflect consumer reaction of the people to whom the Imdrin advertisements are addressed?

Mr. Goding: I object to that.

Trial Examiner Lipscomb: On what ground?

Mr. Goding: On the ground that that is, again, a matter of argument. The witness has testified what he did in the setting up and the conducting of this survey. He has testified that so far as he could, he sought and procured a cross-section of the community. Anything that goes to the individual types, yes, I would say that probably and properly is a matter for cross-examination. But to launch into inquiry in effect amounting to an argument as to the weight to be given to this, I say, has no place in cross-examination.

Trial Examiner Lipscomb: Objection overruled. Proceed with your examination.

(The reporter read the question as follows:

"Question: Then your survey does not reflect consumer reaction of the people to whom the Imdrin advertisements are addressed.")

By Mr. Callaway:

Q. Does it, or not?

A. Well, the only question in my mind, am I qualified

to indicate to whom these advertisements are meant
741 to be addressed.

Q. Well, you read them, you are familiar with them.

A. Yes, yes. I read them.

Q. Who would normally buy Imdrin?

A. You are right. Sufferers of—

Q. Arthritis.

A. Yes. May I have the original question again?

(The reporter again read the question.)

A. I can answer that question only by saying that by not asking whether or not they had arthritis, I do not know whether or not they are included in the people included.

Q. Then the best you can say on it is that you don't know whether that survey reflects the consumer reaction of people, of any people to whom the Imdrin advertisement is addressed; is that right?

Mr. Goding: I object to that. I think all the facts are in, as to what he did. This sort of question is argumentative.

Trial Examiner Lipscomb: Seeking to throw light upon the type, in effect, of the examination of the questionnaire.

Mr. Goding: But the point is, if it pleases the Examiner, that no further light can be shed on this so far as this witness is concerned. He had asked a preliminary question.

Trial Examiner Lipscomb: Then he can quickly
742 state he doesn't know, or he cannot answer.

Let's proceed with the examination.

The Witness: I do not know whether the people I interviewed had arthritis or rheumatism.

By Mr. Callaway:

Q. You asked them two questions, you said?

A. That's right.

Q. Who got up those two questions?

A. Mr. Goding and I.

Q. Whose question was the first one?

A. Well, I would say that neither question belonged to either one of us, but rather was the result of our joint efforts.

Q. The first question was: Do these ads mean that

Imdrin will provide relief of pain of arthritis and rheumatism?

A. That's right.

Q. What do you mean by that question. Do you mean, do these ads mean that Imdrin will only provide relief of pain of arthritis and rheumatism?

Mr. Goding: I object to that.

Mr. Callaway: I am entitled to find out what he wanted to know.

Mr. Goding: May I be heard on that?

Trial Examiner Lipscomb: Off the record.

(Discussion off the record.)

743 Trial Examiner Lipscomb: On the record.

By Mr. Callaway:

Q. Is not that question, that first question, do these ads mean that Imdrin will provide relief from pain of arthritis and reumatism, susceptible of two constructions:

Is it not susceptible of the construction that Imdrin will provide only relief of pain of arthritis and rheumatism; and the second construction, would it not be that relief of pain of arthritis and rheumatism are among the things that Imdrin will provide; isn't that correct?

A. No, I don't quite agree with that, because I read both questions one after the other, and I worded them that by reading them together the distinction would be quite evident.

Q. Then—

A. It is my opinion that I do not see the ambiguity.

Q. What do you think it meant?

Mr. Goding: What did you say?

The Witness: I didn't see the ambiguity of the question.

By Mr. Callaway:

Q. Then you think it means that Imdrin will provide only relief of pain in rheumatism and arthritis?

A. You mean, does my question mean that?

Q. Yes.

A. Yes.

744 Q. Then why did you get up such a question as that?

A. It is in simple straightforward English.

Q. I know. But it is contrary to the facts, isn't it?

Mr. Goding: Wait a minute. I object to that.

Mr. Callaway: Wait just a minute.

Q. Doesn't this—

Mr. Goding: I have an objection, Mr. Callaway. I think I am entitled to have a ruling on my objection.

Trial Examiner Lipscomb: Read the question.

(The reporter read the question as follows:

"Question: But it is contrary to the facts, isn't it?")

Trial Examiner Lipscomb: Objection overruled. You may state whether it is or not.

By Mr. Callaway:

Q. One of these—

Mr. Goding: Let him answer the question.

The Witness: May I hear that again?

(The reporter again read the question.)

The Witness: Is the question contrary to the facts?

By Mr. Callaway:

Q. Yes.

A. No, I don't think so.

Q. Doesn't the very advertisements that you read, that you picked out, say that Imdrin will not only provide 745 relief from pain, but also stiffness and swelling; don't those very ads there themselves say that? Read them. (Handing to witness.)

A. Yes, you are right.

Q. That is, Commission's Exhibit 13 that you are reading?

A. That's right.

Q. Which is this (indicating)?

A. That is No. 6.

Q. Doesn't No. 6 say, "No faster relief is known today. Stiffness and swelling disappear, often overnight"?

A. It says that.

Q. Doesn't Exhibit No. 8 say, "Imdrin with amazing new ingredient that works internally and promises you a better life," does that mean only pain with reference to Commission's Exhibit No. 8?

A. Well, it means apparent freedom from discomfort.

Q. Well, now, why will you get up a question like the first question asked, intending it to mean what you said you intended it to mean—

A. Pain relief only.

Q. Pain relief only, when the very advertisements themselves state in simple English, swelling,—

Mr. Goding: If it please the Examiner—

Q. —and stiffness also?

Mr. Goding: May it please the Examiner, I think
746 it is highly unfair to take out of context sentences, and I think it has become quite evident from this witness's testimony now that the whole of each of the ads was read. So that the sum and total effect of the entire ad, each ad, it was that to which the interviewee's attention was directed, and not to the individual sentences.

That was what we were seeking. I participated in this. I realize what Mr. Callaway has said.

Trial Examiner Lipscomb: Were you present in the drug stores and did you ask some of the questions?

Mr. Goding: I was not present. I participated in drafting these questions, and I presume that that is what is sought to be inquired into now, the background of these questions, why they were worked up that way.

And I will say that my concern, very frankly I don't know what the average consumer would say without such a survey as this.

My concern was, as the witness has stated, what the reaction would be after reading the ad in its entirety.

By Mr. Callaway:

Q. Mr. Breiman, would you think an advertisement that says, "Amazing new discovery for diabetes," would only be for the pains of diabetes?

Mr. Goding: I don't see how—

Mr. Callaway: Hold it.

747 Mr. Goding: Just a moment. I am still entitled to express an objection. You are not acting in a dual capacity here, Mr. Callaway.

Trial Examiner Lipscomb: Gentlemen, gentlemen. This is a most unusual proceeding. We must restrain ourselves.

Would you read that last question.

(The reporter read the question as follows:

"Question: Mr. Breiman, would you think an advertisement that says, 'Amazing new discovery for diabetes,' would only be for the pains of diabetes?")

Mr. Goding: May I be heard on that, if it please the Examiner?

Trial Examiner Lipscomb: Do you wish to be heard on the record?

Mr. Goding: Yes, I would like to be heard on the record.

Trial Examiner Lipscomb: All right.

Mr. Goding: We could stay here from now until Doomsday with questions to the witness who doesn't hold himself up as one who has a tremendous knowledge of what particular representations might mean. He went out on a survey with the very ads involved in this case.

Now, to attempt to challenge the validity of the results from this survey by asking what he thinks a given representation means, I think gains us nothing. There is no
748 probative value to it. It in no way reflects, no matter what the answer may be, in no way reflects discredit upon the validity of what he has done and what he has produced here.

Trial Examiner Lipscomb: I think that probably is correct.

Mr. Callaway: He is a member of the public.

Trial Examiner Lipscomb: He hasn't appeared here as a member of the public, but as a reproducer of certain things.

Mr. Callaway: I think I am entitled to ask him that as one of the qualifications in regard to the credibility to be given the testimony of this witness.

Trial Examiner Lipscomb: It seems to me that regardless of whether he knows anything at all about the particular question you have asked, that you might nevertheless propound certain questions and get certain answers.

Mr. Callaway: Yes. But may I go off the record?

Trial Examiner Lipscomb: Off the record.

(Discussion off the record.)

Trial Examiner Lipscomb: Objection to this question is overruled. The witness may answer.

The Witness: My own personal opinion about it; no.

By Mr. Callaway:

Q. Do you think such an advertisement as that would indicate a cure for diabetes, or an adequate treatment for diabetes?

749 A. In my mind it implies an adequate treatment for diabetes.

Q. I show you the heading of Exhibit No. 8, which says, "Amazing new discovery for rheumatism and arthritis"; doesn't it?

A. Yes, it has that heading.

Q. Have you told us why, in view of the representa-

tion, in so many words, in the advertisement, that it will relieve pain, swelling, and stiffness, have you told us why you worded this first question as you did?

A. If course, you know, I did not word that question. This was based on what Mr. Goding told me were the allegations in the charge, and together we worked out what we thought were two streamlined questions to take up the consumer's time as little as possible, so that we would get an honest, objective reply to each of our questions, to each of our interviews, rather.

Q. Did you realize when you framed these questions that that said in there in so many words that it would relieve pain, swelling, stiffness, uncork joints, and things like that?

A. Yes. I read the statements referred to. I selected them after reading each of the exhibits.

Mr. Goding: I didn't hear that.

The Witness: I read the statements that Mr. Callaway referred to.

By Mr. Callaway:

750 Q. You made a selection of the ads to be used too, didn't you?

A. Yes, I did that.

Q. You did that individually?

A. On my own initiative; that's right.

Q. Mr. Breiman, when you made your selection of advertisements, you looked over Commission Exhibit 19, did you (handing to witness)?

A. May I check that with my records?

Q. Yes.

A. These are the only photostats of exhibits that were given to me (indicating).

Q. Commission Exhibit 19 shows, for example, folks in wheel chairs, in bed, suffering, on one row of pictures, doesn't it (indicating)?

A. The original does, but my photostat does not.

Q. And then in the next row it shows one girl out there bowling, and another fellow out playing golf, doesn't it?

A. That's right. In the original it does; yes.

Mr. Goding: I might state for the record at this point that I—

Mr. Callaway: Let me finish the question.

Mr. Goding: All right.

By Mr. Callaway:

Q. You weren't really in a position, from what
751 you had to show the folks there, to really pick out representative advertisements, were you?

A. In my opinion, I thought this one (indicating) was indicative of that ad. I realize it wasn't a word for word reproduction of that. But I thought enough meat of this ad was in it to use this ad as a representative one.

Q. You didn't consider having any bearing on the questions, or the impression to be made on people to whom you were going to interview, the pictures of folks in one row in wheel chairs and in bed, and then in the next row, bowling and playing golf; you didn't think that would help?

A. I considered each one carefully. But I thought, for the purposes of conducting the survey with the least amount of time demanded of the consumer interviewed, that this was the easiest for them to read and at the same time give me a full answer to the questions.

Q. But it wouldn't portray what is portrayed on Commission Exhibit 19, would it?

A. If you are referring to the wheel chair, no. There is bowling here, for example (indicating).

Q. But it doesn't show them in bed and in wheel chairs?

A. Not on the one I showed them.

Mr. Goding: I think I should make this statement: That I applied to the Commission for photostats, photostatic
copies, in order to prepare for this consumers survey,
752 and I procured these, all of these photostatic copies of the Commission.

So that if there is any blurring, it was something beyond my control. I mean this very seriously. There was an answer by Mr. Breiman that it is not too clear, he said, on the one side. I think you will see it is smaller (indicating). It wasn't anything that was attempted to be concealed.

In other words, I tried to do, we both tried to do everything that could be done under the circumstances.

By Mr. Callaway:

Q. Now, Mr. Breiman, when were you employed to do this survey?

A. I was first approached in November of 1950.

Q. I don't mean when you were first approached; when were you employed?

A. Of course, I was paid in two lump sums thus far, and I expect to receive additional compensation, of course.

Q. How much were you paid?
A. Thus far?
Q. Yes.
A. $1025.00.
Q. How much additional compensation do you expect to receive?
A. I expect to receive another $400.00.
Q. Each person that you interviewed, how long a
753 time did it take?
A. It varied on the individual's reading. Some took two or three minutes; some took five to six minutes to seven minutes.
Q. Did you insist on their reading the thing in full?
A. Yes. I asked them to read this so that I may base my question on what they read.
Q. Did you pay any of the folks anything?
A. Not a cent.
Q. For the opinion that you got from them?
A. Not a cent.
Mr. Callaway: Are you going to offer in evidence the results of the interview?
Mr. Goding: Mr. Callaway, I just made a note here to make a statement for the record by way of repetition, actually, that on Mr. Breiman's records there appears the name and address of each of the parties interviewed.
You are free to have the reporter copy it. I don't think it is necessary for me to put it in the record. I will be very happy to do it. As a matter of fact, if there is no objection, I will agree with you it should go into the record. If you don't object, it is perfectly all right. It is probably the best way to have it done.

By Mr. Callaway:

Q. Mr. Breiman, did you have these sheets with these names and addresses on them when you interviewed the people?
754 A. No; only after they were interviewed.
Q. I don't understand you.
A. May I explain?
Q. Yes.
A. I worked with this clipboard (indicating), and when I started out at the very beginning, I had nothing but blank pages. And as I worked my way through the surveys, when it was concluded in each case, I would ask

them after they had given me the response to the questions, I would ask them for their name and address.

Q. Did you have the names and addresses of the other folks?

A. No. Those are the only names and addresses I had.

Q. For instance, you have the name of Chester Robbins here, about a little bit over half-way down the first column.

A. Yes.

Q. Were these other names on your slip when you were interviewing him?

A. Oh, yes; that's right. They were there before I spoke to him. It is in chronological order; that's right.

Q. And you had it worked out, "Pain Relief," and "Care and Treatment"?

A. That is right.

Q. And checked down to there?

A. That is right. But I did not show him the—

Q. You didn't try to keep him from seeing it, did you?

755 A. I actually did. I tried to keep it close to my chest.

Q. What did you have to hide about it?

A. I wanted to keep it as subjective as possible. Because sometimes people may be influenced by the replies of others.

Q. You never purchased any Imdrin yourself, did you?

A. No, I never have.

Q. You purchased aspirin?

A. Yes, sir.

Q. Ordinary bottle of aspirin in a drug store?

A. That is right.

Q. They come in five-grain tablets, don't they?

A. I purchased the U. S. P. 5-grain tablet form; that is right.

Q. That is what Bayer aspirin contains?

A. I believe that is 5-grain aspirin too.

Mr. Callaway: I think that is all.

Mr. Goding: May I go off the record a moment?

Trial Examiner Lipscomb: Off the record.

(Discussion off the record.)

Trial Examiner Lipscomb: On the record.

Mr. Goding: I should like to make this statement for the record, if I may:

As indicated by the Trial Examiner when we were off the record, and I am in complete agreement with his state-

ment in this regard, that there is no point in putting
756 these records of Mr. Breiman in the record.

I would, however, like to make this statement for the record, and that is that we are ready, by any means, to permit the Government to have the names of these various people who were asked the two questions, testified to by Mr. Breiman, and whose responses thereto were recorded here.

Trial Examiner Lipscomb: Anything further to come before this hearing?

Mr. Callaway: Yes, I have another matter. I am through with the witness.

Trial Examiner Lipscomb: The witness is excused.

(Witness excused.)

Mr. Callaway: I have here copies of two publications of Dr. Mayers who testified in Chicago, about which he was cross-examined some, and I would like to offer them in evidence at this time. I think they tend to offset and contradict some of the Doctor's testimony from the witness stand.

Trial Examiner Lipscomb: The witness you refer to, is he the author of these?

Mr. Callaway: Yes, he is the author of those two articles.

Mr. Goding: I don't know whether actually these two reprints or photostatic copies are in the list of papers that Dr. Mayers testified he had written. On the as-
757 sumption that they are, I have no objection.

Mr. Callaway: I can assure you that they are.

Trial Examiner Lipscomb: There being no objection, the two exhibits are received in evidence as Commission's Exhibit Nos. 40-A through -K, inclusive, and 41-A through -F, inclusive.

(The papers referred to were received in evidence and marked COMMISSION'S EXHIBITS 40-A, 40-B, 40-C, 40-D, 40-E, 40-F, 40-G, 40-H, 40-I, 40-J, and 40-K, and 41-A, 41-B, 41-C, 41-D, 41-E, 41-F, inclusive.)

Trial Examiner Lipscomb: Is there anything further to come before the hearing?

Mr. Callaway: I would like for a date to be set when the respondent will be concluded. I want some kind of a schedule where we can know how soon we can get through with it.

Mr. Goding: I would like to be in a position to do that.

I think I can say at this time that beyond our next sessions in Cleveland and Chicago, May 22nd and 23rd and 25th, respectively, I think there probably will not be much beyond that.

Now, I cannot speak with complete finality in that regard. But after having talked with my associate, Mr. Gettleman, in the case, I think that is about the situation.

Trial Examiner Lipscomb: The hearing is now
758 adjourned, to reconvene as previously announced at Cleveland, Ohio, on May 22nd.

(Whereupon, at 3:40 P. M., April 25, 1951, the hearing in the above-entitled matter was adjourned.)

759 Room 802-A, New Post Office Building,
Canal and Van Buren Streets,
Chicago, Illinois
Tuesday, May 22, 1951.

Met, pursuant to notice, at 10:00 A. M.

Before:

Abner E. Lipscomb, Trial Examiner.

Appearances:

Joseph Callaway, Counsel supporting the complaint.

James B. Goding, Attorney for the respondents, Rhodes Pharmacal Company, Inc., et al.

760 PROCEEDINGS.

Trial Examiner Lipscomb: The hearing will come to order. Is counsel for the respondents ready to proceed at this time?

Mr. Goding: If it please the Examiner, I wish to express my regret that the two witnesses whom we had scheduled to appear here this morning are unable to appear. One of them from out of town I learned last night will not be able to appear until tomorrow morning. The other one we learned about fifteen minutes ago is unable to appear because of illness.

We have scheduled other witnesses to appear here this afternoon, the first one at two o'clock and with your

Honor's indulgence I should like a postponement until that time.

Trial Examiner Lipscomb: Under the unfortunate circumstances stated the hearing is adjourned to reconvene at two o'clock.

(Whereupon, at 10:05 A. M., a recess was taken until 2:00 P. M., this day.)

761 Afternoon Session.

2:00 P. M.

Trial Examiner Lipscomb: The hearing will come to order. Counsel may call his first witness on behalf of the respondent.

PETER J. MARETTA was thereupon called as a witness for the respondents and, having been first duly sworn, testified as follows:

Direct Examination by Mr. Goding.

Q. Will you please tell us your full name?
A. Peter J. Maretta.
Q. Where do you live, Mr. Maretta?
A. 1811 South 56th Avenue, Cicero, Illinois.
Q. And where are you employed?
A. Lincoln Towers, 75 East Wacker.
Q. What is your occupation?
A. Elevator operator.

Mr. Goding: Now, if it please the Examiner, I would like to offer this witness' testimony de bene, conditionally, subject to being linked up with medical evidence as to the nature of this gentleman's condition for which he took the product involved here, Imdrin. The doctor will be here later in the afternoon and I offer it conditionally for
762 that reason.

By Mr. Goding:

Q. Did you have some physical ailment involving a joint of your body?
A. Yes, my right leg.

Q. In your right leg?
A. Yes.
Q. What part or parts of your right leg?
A. Well, it was at the joint, at the knee joint and up on top and then on the front of the leg.
Q. You see, the reporter can't put down when you say "here". You said your knee joint and then where?
A. On up in here around the top and down in front here.
Q. Down on the shin bone?
A. And all up in here.
Q. And in and around the hip joint?
A. Yes.
Q. Is that where you were indicating?
A. Yes, right down in the leg here.
Q. When did you have those pains?
A. A couple months ago.
Q. Did you see a doctor for it?
A. Yes, I seen a doctor.
Q. At that time?
A. Yes.
763 Q. Did you take anything for the pain?
A. Well, I was rubbing it down and everything but it didn't help me at all, so I went over to my brother-in-law's to see a fight on TV and he told me he had heard about it, so I went over to the drugstore and paid three bucks for a bottle and tried it.
Q. And what was that, a bottle of what?
A. Imdrin.
Q. Can you tell us now as to whether—you took the Imdrin, then, while you were, as I understand it, still in pain, is that right?
A. I don't follow you.
Q. Did you then use the Imdrin?
A. Yes. I took them the same day I bought them.
Q. And at that time when you took it were you in pain?
A. Yes.
Q. What happened with regard to the pain when you took Imdrin?
A. Well, I took three pills for the one day and it eased up my pain. Not only that but when I went to bed it made me sleep better at night and I kept on taking them until the pain eased up and when I finished mostly all the bottle I didn't have any more pain. I don't have any more pain. I don't ever have any now.

Q. Prior to this period that you speak of, when
764 you had the pain, did you ever have anything like that before?

A. No, never in my life.

Q. Has the pain come back since then?

A. It hasn't come back at all.

Mr. Goding: I think that is all.

Cross-Examination by Mr. Callaway.

Q. Mr. Maretta, you say this is the only time you were ever troubled with that condition?

A. Yes.

Q. In other words, when it first began to trouble you how did it affect you?

A. I just had dull pains and then it started getting stronger and stronger.

Q. Did you notice any swelling or anything like that?

A. No, no swelling, nothing swollen or nothing at all.

Q. Nothing at all?

A. I just had the pain there. As a matter of fact, I went to see my own doctor, Dr. Binder. He is located on Oak Park Avenue.

Mr. Goding: He is located where?

The Witness: On Oak Park Avenue. It is 6800 west and 3500 south, in a medical building there, and he took a look at my legs and he said—

Mr. Callaway: Wait, you can't tell what the doctor
765 said to you.

By Mr. Callaway:

Q. You say this first attacked you about a couple of months ago, is that right, is that the way I understood it?

A. Yes.

Q. There was a dull pain at first, you say, and it kept getting worse?

A. Yes.

Q. Was it worse when you would sit still or when you would move around?

A. It would bother me when I would sit and left it alone. I had to keep moving it to relax the leg. It would tighten up or something like that.

Q. When you went to see the doctor did he ask you about it? I mean what did he do?

A. He looked at my leg.
Q. Did he take any X-ray pictures of it?
A. No. He told me I have to—
Mr. Goding: Just a minute.
Mr. Callaway: You can't tell that. It is a rather unusual situation but you can't tell what he told you. What I was trying to find out is what he did. You can tell what he did.
A. Oh, he looked at my leg and he felt around and everything and he said he couldn't tell unless he took X-rays.
766 Q. Did he take X-rays?
A. No. I didn't feel like taking X-rays. Instead I went over to my brother-in-law's. I went there to watch a fight on TV, I think it was the Robinson—what is that fellow's name?
Q. I just can't remember.
Mr. Goding: You saw a fight on television and, as I understand it, Imdrin was being advertised on TV.
The Witness: No, it wasn't advertised, but he said he seen it advertised and he told me to get some.

By Mr. Callaway:

Q. Well, you didn't see or hear any advertisement for Imdrin yourself, did you?
A. No. So I tried them out and the pain started easing up and I didn't even go about taking X-rays which the doctor told me had to be done, because I feel that the pain is gone now. There is no use taking X-rays.
Q. Did you go to see the television show right after you went to see the doctor? Was it the next day or something like that?
A. No, I went to see the doctor first.
Q. Yes, I understand.
A. He wanted me to take X-rays but I didn't have any money for it.
Q. And then how soon after you saw the doctor was it?
767 A. That was on a Tuesday and I went over on a Wednesday to see the fight.
Q. That was the next day?
A. Yes.
Q. And then the next day after the Wednesday, on a Thursday, you bought the Imdrin, is that right?
A. Yes.

Q. Have you seen any other doctor since then?
A. No, I haven't. I have seen that Dr. Weisberg the other day.
Q. How come you went to see Dr. Weisberg?
A. Mr. Leler sent me.
Q. Who is Mr. Leler?
A. He works at Rhodes Pharmacal. He has a part in there.
Q. And he asked you to go see Dr. Weisberg?
A. Yes.
Q. Did he tell you why he wanted you to go see Dr. Weisberg?
A. Yes, he told me that—you see, when I bought the pills and I looked at them the next day after I took three pills I found out they were done by Rhodes Pharmacal. Well, I knew we had that company in our building, so I told Mr. Leler when I saw him on the elevator, I told him I had bought some of his products and it eased up my pain and all that and he told me if I run short of the pills,—I was just trying to save the three dollars,—it wouldn't
768 cost me anything. So Mr. Leler said, "Sure, any time when you run short of them I will give you another bottle." I said, "All right". So he has been asking me how my leg is getting on and I told him it kept getting better all the time. So he asked me if I would do him a favor and that is the way it happened.
Q. And then you went over at his request to see Dr. Weisberg?
A. They sent me over to the doctor and he checked my leg.
Q. To Dr. Weisberg?
A. Yes.
Q. When you went to see Dr. Weisberg what did he do?
A. Moved my leg and everything; gave me a complete physical.
Q. How did he check your leg? I mean by feeling it and moving it back and forth?
A. Moving it back and forth and everything. He almost tore the leg apart. I told him to take it easy.
Q. How long ago was it when you went to see Dr. Weisberg?
A. That was yesterday.
Q. That was yesterday?
A. At 5:40.

Q. Did he take some X-ray pictures of your leg?
A. No. I haven't taken any X-rays.
Q. He didn't take any X-rays?
A. No.
Q. Was your leg swollen any when you went to see Dr. Weisberg?
769 A. No. I don't have any pain at all. My pain has been gone for about three or four weeks now.
Q. And the first time you saw Dr. Weisberg was yesterday, or the day before yesterday?
A. Yesterday.
Q. You had never been to see Dr. Weisberg before that time?
A. No. I didn't even know the name.
Q. You didn't even know he lived, did you?
A. No. That is the first time I had ever seen him in my life.
Q. When this Dr. Binder that you went to see—that was, I believe, the name of the doctor that you saw first?
A. Dr. Binder.
Q. Just what made you go to see him? Your leg was hurting, is that the reason?
A. Yes, my leg was bothering me, I was in pain.
Q. Was it on account of the pain that you went to see him?
A. Yes. All he did was looked at my leg.
Q. I guess you were hoping that he would get rid of your pain for you; that is what you were wanting to do when you went to see him?
A. Yes. He gave me a prescription to fill out and I never even bothered to fill it out, because he wanted me to take X-rays. He said, "This prescription will hold you and ease the pain until you come for X-rays".
Q. What were you seeking when you went to see
770 him, was what I was getting at? You were seeking relief from pain, were you not?
A. That is all.
Q. And if as a result of that trip when you went to see him you had gotten relief from pain you would have been—
Mr. Goding: I object to that.
Trial Examiner Lipscomb: I think you are correct.
Mr. Callaway: Sir, was there an objection?
Mr. Goding: Yes.

By Mr. Callaway:

Q. Let's see: I believe you said you were an elevator operator?

A. Yes.

Q. And that is in the Lincoln Towers Building?

A. That is right.

Q. In operating that elevator are you on your feet a good deal?

A. No. I am sitting down all day long.

Q. You are sitting down all day long operating it?

A. Yes.

Q. Do you sit in one position pretty well all day long?

A. No, I move around. When I get tired sitting I stand for a few minutes, but most of the time I am sitting down on a stool.

Q. How many floors are there in that building?

771 A. We have forty-two stories, but I cover from 1 to 22, local, and it isn't a very busy building.

Q. How long have you been doing that kind of work?

A. About three years.

Q. What did you do before that time?

A. I was in the service and then I worked driving truck, worked at Chrysler, internal and external grinder.

Q. Did you buy anything in the drugstore to take before you went to see Dr. Binder?

A. I didn't take nothing. I didn't buy anything.

Q. How long had you had this pain before you went to see Dr. Binder?

A. I had this pain about over three weeks.

Q. Before you went to see Dr. Binder?

A. Yes.

Q. And then how long after you bought the Imdrin and started taking them was it before the pains left?

A. Well, right after I seen the doctor, the next day I bought the pills, Thursday, I think it was on a Thursday, I believe, or on a Friday, on a Saturday, I guess I started taking the pills and things started to ease up on me and everything, so I kept taking the pills and I didn't even bother to go back to the doctor to take the X-rays. He wanted me to take X-rays, but I didn't want to spend the money for the X-rays, that was the idea, so I never

772 went back to him. I got relief from Imdrin.

Q. Did you take the pills according to the direction on the bottle?

A. Yes, one before each meal.
Q. One pill before each meal?
A. Yes. I took three pills a day.
Q. You took three pills a day?
A. Yes.
Q. Until you used up the whole bottle, is that it?
A. I didn't even use up the whole bottle.
Q. Approximately the whole bottle?
A. I have about six pills left, I imagine.
Q. Do you remember over how long a period of time it took you to take those pills?
A. I took them pills for about,—I think it was for about four weeks on and off. When the pain eased up,—it eased up on me when I took the pills,—then I didn't bother taking pills for one day and then it would come back again and then I took the pills again until all of a sudden, after a couple of weeks, three or four weeks, it went away and I never got any pain any more.
Q. Did it go away gradually or just—
A. It went away gradually, yes. It eased up quite a bit on me.
Q. When you finally felt like the pain had ceased
773 completely were you taking pills then?
A. No, I stopped taking them.
Q. You had stopped taking them?
A. Yes.
Q. You had stopped taking them before it went away completely?
A. It went away and then I stopped taking the pills.
Q. You took the pills clear up to the time it did go away?
A. That is right.
Q. That is what I was trying to find out. You said you took them on and off. Say, for instance, when you first got them did you take them three days in a row steady, or something like that?
A. I took them about,—it was four days in a row straight. As a matter of fact, I even used to wrap some up in toilet paper and bring them down to work with me to take when I had my lunch.
Q. So that you could take them?
A. And when it eased up I didn't bother taking them at night, and then I went right back on it again.
Q. Then you took them some more?
A. Then I took them some more and the pain was gone.

Q. Then did you quit taking them then?
A. Yes.
Q. And then did the pain come back any more?
A. No.
774 Q. It didn't come back any more?
A. The pain never came back.
Q. Who was it asked you to come down here and testify?
A. Mr. Leler told me if I would do him a favor, that is all. He told me to go see the doctor and told me to come over here, if I would do him a favor. I said, "Yes, I don't care."
Q. And you are just over here as a favor to Mr. Leler, is that right?
A. Yes.
Q. They are not paying you anything for appearing here today?
A. No.
Q. And, of course, you are not losing any time from work on account of it?
A. No. I am on my lunch hour now.
Q. You are on your lunch hour now?
A. I told him the only time I can make it is on my lunch hour.
Q. Now, when Dr. Weisberg examined your leg you say he twisted it around very considerably?
A. Yes.
Q. Did any of these pains return when he twisted it around?
A. No. No pain came back whatsoever.
Q. Did you have to take any time off on account of these pains when you had them?
775 A. No. I went to see the doctor in the evening. I went to work all the time.
Q. You did not lose any time from work?
A. No, I did not.
Mr. Callaway: That is all.
Trial Examiner Lipscomb: You are excused, sir.
Mr. Goding: Thank you very much.

(Witness excused.)

MRS. RHODA LIPSIE was thereupon called as a witness for the respondents and, having been first duly sworn, testified as follows:

Direct Examination by Mr. Goding.

Q. Will you tell us your full name, please?
A. Rhoda Lipsie.
Q. Are you married?
A. Yes.
Q. And your occupation is that of a housewife?
A. Housewife, yes.
Q. Where do you live, Mrs. Lipsie?
A. 661 Sheridan Road.

Mr. Goding: I would like to make the same statement with respect to this witness that I made with regard to the previous witness and that is that the evidence is offered de bene, subject to being tied up by medical evidence 776 which will be furnished later.

By Mr. Goding:

Q. Now, Mrs. Lipsie, at some time were you bothered with pain in your body?
A. Yes, I was.
Q. What part of your body?
A. My hand, the hand that I use most, my left hand.
Q. Your left hand?
A. Yes.
Q. Will you tell us when that pain commenced?
A. About three years ago.
Q. Did you see a physician at that time?
A. No, I didn't.
Q. What did you do for that pain?
A. Well, I waited quite a few months, shall we say around ten or eleven months, and I finally got busy. I thought I just couldn't take it any longer.
Q. You mean you couldn't take the pain any longer?
A. That is right.
Q. What did you do?
A. Well, I started to read advertisements and things like that for a quick relief and I bought a bottle of Imdrin.
Q. And can you fix the time about when that was?
A. About two years ago. I wouldn't know what month.
Q. Did you take Imdrin then when you bought it?

777 A. I took them insistently until I finished two bottles.

Q. You took them—

A. Four a day.

Q. You took them on successive or consecutive days until you completed two bottles, is that right?

A. That is right.

Q. And, as I understand it, you say you took four a day?

A. That is right.

Q. Will you tell us what effect, if any, it had on the pain?

A. Well, it left me. The pain left completely.

Q. Will you tell us when the pain was completely eliminated?

A. I ran out of them and I thought I would wait, say, about three or four weeks before I would get more and I noticed I didn't have any pain and so I didn't buy any more for awhile.

Q. Did you buy some more later?

A. Yes, I did but I didn't use them four a day. I only took two a day.

Q. How long did the pain last after you bought your further supply?

A. Probably,—well, shall we say just a couple of months?

Q. When, specifically, would you say that your pain was completely eliminated?

A. Six months ago.

Q. About six months ago?

A. Yes.

778 Q. Now, some time subsequent to the time when you first purchased Imdrin and used it did you communicate with Rhodes Pharmacal Company?

A. No, I didn't but I called Mr. Heller or Keller. I can't pronounce his name.

Q. Mr. Leler?

A. Yes.

Q. That was my question, whether you communicated with the Rhodes Pharmacal Company.

A. With Mr. Leler.

Q. And you spoke with Mr. Leler?

A. Yes.

Q. And you told him substantially the same story you told here about it?

A. Yes.

Q. And subsequently did they communicate with you and ask you to come down here and tell your story, is that right?

A. Yes, that is right. I told them I would be glad to come.

Q. In the past few hours have you seen Dr. Weisberg?

A. Yes, I have.

Q. And he examined your hand?

A. Yes, he did.

Q. And talked to you about your previous condition?

A. Yes.

Q. Or about your hand, the condition of your hand?

779 A. Yes.

Q. Since,—and I think you said it was six months ago,—have you had any further recurrence of pain?

A. No, I haven't.

Q. And have you used Imdrin?

A. No, I haven't.

Mr. Goding: I think that is all.

Cross-Examination by Mr. Callaway.

Q. Mrs. Lipsie, which hand was it?

A. My left hand.

Q. Your left hand?

A. Yes.

Q. You have some joints there? Is that stiff?

A. You can touch it now. I wasn't able to touch my joints at all.

Q. I understand.

A. But now I can.

Q. There is no pain in there now?

A. No, no pain at all.

Q. Can you straighten that finger out?

A. No, I can't.

Q. This little finger seems to be stiff, too.

A. That is right, yes.

Q. How long have they been that way?

780 A. Well, this entire time that I had pain, the year before I even took Imdrin they got that way but I can open them now. I wasn't able to. I can bend them.

Q. You can open them?
A. Yes.
Q. You can bend them in?
A. Yes.
Q. But you can't straighten those end joints of the forefinger or your little finger?
A. That is right.
Q. And that is on your left hand?
A. That is right. My other hand is O.K.
Q. This swelling that you see there around the knuckle of your forefinger and around the last joint of your little finger, how long has that been there?
A. Well, all of the time.
Q. The whole time?
A. The whole time, yes.
Q. When you went to see Dr. Weisberg, I believe that was today?
A. Yes.
Q. Is that the first doctor that you have talked to about that condition?
A. Yes, it is.
Q. You did not go to any other doctor at all?
781 A. No, I didn't.
Q. Mrs. Lipsie, are you a housewife?
A. Yes.
Q. You do not work away from home?
A. No.
Q. You know, we have had lots of talk from doctors and experts and all that but we haven't had anybody except you and one other gentleman who just preceded you on the witness stand who actually had a hand or a joint to show, you understand, and—

Mr. Goding: Excuse me. I am wondering whether remarks of this kind—I am sure they are made in a cooperative spirit,—but I am wondering whether counsel should be indulged in such excursions. I think they have no place in the record.

Trial Examiner Lipscomb: I think not.

Mr. Callaway: Well, now, your Honor, I am really interested in what the lady has to tell.

Mr. Goding: I would suggest after the hearing counsel can talk to the lady at his leisure and we are fully cooperative, I am sure, but so far as the issues in this proceeding are concerned I suggest that any observations or

the direction in which his remarks were going are entirely irrelevant here, so far as this case is concerned.

Mr. Callaway: All I want is what this lady can
782 tell us.

Trial Examiner Lipscomb: I think if you will propound just straightforward questions we can cover the point in that way.

By Mr. Callaway:

Q. Mrs. Lipsie, is there not stiffness in the entire joints in that left hand except the two end joints?

A. No.

Q. Now, you can bend them but it looks like—

A. But I wasn't able to until I had relief.

Q. I know it but what I was talking about, it looks like you have some difficulty in closing it now. I mean you don't close it as readily as with the right.

A. No; I think it is pretty good.

Q. I do, too.

Mr. Goding: I am not so sure—I don't want to be technical, but I am not so sure that we have the ability here to determine now whether counsel can grasp better than this witness.

Mr. Callaway: Don't you want me to ask the witness any questions?

Mr. Goding: Of course.

Mr. Callaway: I just don't understand. What do you want the lady to do? I don't want anything except the facts.

783 Trial Examiner Lipscomb: I think if you will confine your cross-examination to crossing the direct it will be better.

By Mr. Callaway:

Q. Now, let's see: You say you went ten or eleven months, I believe, after this hand first got in the condition in which it was?

A. Well, I imagine it was around that before I found relief, yes.

Q. Did you take anything at all during that ten or eleven months?

A. No.

Q. You did not even take any aspirin tablets?

A. No. I wasn't conscious of it as much until it really

gave me a lot of trouble, I imagine. You sort of ignore pain sometimes.

Q. But it hurt you during that ten month period, didn't it?

A. Yes, a little.

Q. When would it hurt you the most of the time? During the day would it hurt you mostly or during the night?

A. Not anything special. Sometimes the humidity in the air would affect it.

Q. Did you notice any special pain or stiffness when you first got it?

A. Yes, there was a feverish pain in there, sort of
784 a burning sensation, a fever.

Q. Was there any fever in the joints?

A. Yes.

Q. Could you feel that?

A. Yes, that was in the joint.

Q. I mean you could feel that all outside, and it was normal?

A. Yes.

Q. Were they swollen larger than they are now, the joints?

A. No.

Q. They never were swollen larger than they are now?

A. No, they never got larger.

Q. When did that stiffness in the end joints of the forefinger and the little finger come, when did they come?

A. At the beginning, it started right away, but it let up. When I took the pills, then it stopped. I felt now I could bend my fingers where before I couldn't.

Q. Do you remember what the advertisement—you say you read an advertisement for Imdrin?

A. Yes, I saw it in the paper.

Q. In what paper? Do you know what paper that was, Mrs. Lipsie?

A. It looked to me like the Daily News, I think, if I could remember. It has been sometime ago.

Q. Was it one of these big page advertisements that you saw?

A. Yes.

Q. I am just wondering if—

785 Mr. Goding: Let us get the purpose of the anticipated interrogation.

By Mr. Callaway:

Q. Did the advertisement you saw look something like that?

A. No, I don't quite recall anything that large.

Q. You don't recall that?

A. No.

Mr. Goding: Excuse me.

Trial Examiner Lipscomb: Counsel, he would like to inquire of you.

The Witness: It has been a long time ago and I can't remember.

Mr. Callaway: Well, I just wanted to find out what caused her to start using Imdrin. I think I am entitled to make that inquiry.

Mr. Goding: The pain. She says the pain in her hand.

Mr. Callaway: I don't think a person would start taking Imdrin—

Mr. Goding: She heard of it through an advertisement, yes, sure.

Mr. Callaway: Well, all right.

A. They were even advertising on television and radio, so it must be good.

Q. Did you hear the advertisements on television and radio?

786 A. Yes, I did and I heard it on radio.

Q. What did it say, the advertisement?

Mr. Goding: Excuse me just a minute. I am going to object to that. I would like to be heard on that. I did not go into the context of the advertising. I am not sure, I have no specific memory as to what this lady did say in direct examination as to advertising, but I do think that in view of the limitation of my examination that any questions going to the nature of the advertising would be far beyond the area of my direct examination.

Trial Examiner Lipscomb: Will you give us your side on that?

Mr. Callaway: I think she said she saw an advertisement and as a result of it bought Imdrin and I think I certainly am entitled to inquire about the advertisement.

Trial Examiner Lipscomb: I think you are entitled to get at least her sense of impression from reading the advertisement. She may not be able to repeat it but she can at least give her sense of impression.

By Mr. Callaway:

Q. What did you understand about it? Was it the newspaper advertisement that you saw that caused you to buy the Imdrin or was it the radio advertisement or was it a combination of both?

A. It was a combination. I was in pain and I was
787 looking for relief and I didn't want to go to a doctor and so I tried it.

Q. Now, you saw Dr. Weisberg, I believe?

A. Yes.

Q. And is that the first time you have seen him?

A. Yes.

Q. And that is the first time that you have seen any doctor in relation to this condition?

A. That is right.

Q. How long were you with Dr. Weisberg when you saw him?

A. Oh, about a half hour, around a half hour.

Q. Did he ask you a good many questions?

A. Yes, regarding my hand and the pain and the nature of the thing, and I explained to him. He said I had a very interesting case.

Q. Did he take any X-ray pictures of your fingers?

A. No.

Q. Did he take a sample of your blood or anything like that?

A. No.

Q. In other words, he talked to you and looked at the hand and that is the full sum total of what happened when you went to see Dr. Weisberg?

A. That is right.

Q. Is that correct?

A. That is right.

Q. Do you folks kep aspirin tablets at home?

788 A. Yes, we do.

Q. Do you ever take them?

A. No.

Q. Who takes aspirin in your family?

A. The mister takes it occasionally for headache.

Q. And you have never taken an aspirin tablet?

A. Very, very seldom. I don't use them.

Q. Before this came on, Mrs. Lipsie, the beginning of this trouble that we are talking about now, had you taken any aspirin tablets?

A. No, sir.
Q. For anything?
A. No, I never did for anything.
Q. You never did take any aspirin tablets for anything?
A. I took it probably once a year if I had a bad cold, or anything like that, but I never made a practice of taking them. I don't like them.
Q. Do they bother you when you take them?
A. No.
Q. You said you don't like them. What do you mean?
A. I am not interested in aspirins. I don't know. There are a lot of people do. They are habit forming. I don't.
Q. Is there anything else in your medicine cabinet at home that you take when you feel badly and things like that?
A. No. I have never been sick. I am very happy 789 that I am well.
Mr. Callaway: I think that is all.
Mr. Goding: Thank you very much.
Mr. Callaway: Wait a minute, one other question.

By Mr. Callaway:

Q. Did you just come down here at Mr. Leler's request?
A. Yes, I did.
Q. There is no—
A. But I tell you what I did, I offered it myself. I said I was so thrilled and happy that I have relief that I was glad to come.
Mr. Callaway: I see, that is fine. That is all.
Mr. Goding: Thank you very much.
(Witness excused.)

MRS. IDA KLAUS was thereupon called as a witness for the respondents and, having been first duly sworn, testified as follows:

Direct Examination by Mr. Goding.

Q. You are Mrs. Ida Klaus?
A. Yes.
Q. And you live at 1024 North LaSalle Street?
A. Yes.

Q. Chicago, Illinois?

A. Yes.

790 Q. Now, have you been bothered for some time with pains in your body?

A. Between my shoulders.

Q. Between your shoulders?

A. Yes. I had arthritis between my shoulders, too, the doctor claims. I didn't know it until the X-rays were taken.

Q. Will you tell us where you had pain, what parts of your body?

A. Right between my shoulders.

Q. Anywhere else?

A. Yes, and in my knee.

Q. And where else?

A. That is all, them two places.

Q. Between your shoulders and your right knee?

A. The right knee was the worst.

Mr. Goding: At this point I should like to make the same statement I did with regard to the earlier witnesses; that is, that this evidence will be linked up subsequently by medical evidence.

By Mr. Goding:

Q. Now, will you tell us when you first started to get these pains?

A. It was about the latter part of August last year.

Q. What year?

A. Last year.

791 Q. Of 1950?

A. Yes.

Q. Tell us in your own way what happened then.

A. Well, my knee started to swell and it started to hurt.

Q. Did you say your knees, both of them?

A. Just my one knee. My knee started to swell, I didn't say both of them and, of course, I went to the doctor and he didn't know what it was either. He took X-rays of them, gave me pills and shots, you know. Then I completely got run down, I couldn't sleep. Then they said I should—

Q. Was that from the pain that you couldn't sleep?

A. From the great pains. Then they said I should go to the hospital.

Q. What hospital did you go to?

A. St. Joseph's.
Q. In Chicago here?
A. Yes, St. Joseph.
Q. How long were you in the hospital?
A. I was there two weeks.
Q. What did they do for you there?
A. How?
Q. What did they do for you there?
A. Shots and pills. Well, they took X-rays. And then I told them that I had such an awful pain between my shoulders that I couldn't sleep, sometimes I had to
792 sit up, that has been going on for a couple of years and they suggested that I had to have an X-ray taken. Then I went to the hospital and had an X-ray taken from the knee and they said it was arthritis and when I got to the hospital they took X-rays again and then they took an X-ray and found I had arthritis between my shoulders, so I took pills.

Mr. Callaway: Now, just a minute. I object. I didn't understand what she was saying before, but she has been saying that she has had arthritis between her shoulders and arthritis in the knees and that is not permissible from this witness, a lay witness.

Mr. Goding: I agree.

Mr. Callaway: So I want to object to that answer and ask that all reference to arthritis from this witness be stricken from the record.

Trial Examiner Lipscomb: It will be stricken from the record, her reference to arthritis. She may describe simply where it hurt.

By Mr. Goding:

Q. All you can tell about here is where you had your pain and what the pain was, the nature of it. You cannot call it by a name; that is for the doctor to say.
A. It was a very severe pain that I had in both places.
Q. You said that you were in the hospital for a period of about ten days, did you say?
793 A. Two weeks.
Q. And then what happened?
A. Well, the doctor must have told my husband I couldn't be cured.
Q. Then what happened?
A. I came home and I seemed to be getting worse, it was pain, pain, pain, my leg got numb all the way down

to my ankle, I couldn't walk and that is the way I was suffering and suffering, that is all, and I took shots and pills and got no better.

Q. Bring us up to, I think,—was it November?

A. It was about the middle of November when I got some of this; I started to take the first bottle.

Q. What was it that you took in November?

A. Your pills.

Q. Imdrin?

A. Yes.

Q. And how did the pills affect your pain?

A. It took it away.

Q. From the middle of November, when you say you first started taking Imdrin, how long did you take it?

A. Well, I am still taking them off and on yet. I don't take them as regularly as I did.

Q. Were you able to sleep after you—

A. Sure I was able to sleep, able to walk around, 794 able to go out. I couldn't get out of the house before.

Q. Did you yourself go out and buy the Imdrin?

A. No, he bought the first one.

Q. Who is "he"?

A. My husband.

Q. Was that because you were unable to leave, is that it?

A. How?

Q. Why didn't you buy them yourself?

A. How could I buy them? I couldn't go out. My husband went out for them. My husband suggested, "Would you like to take a chance"? I said, "I will take a chance on anything to get this pain relieved." I said, "I will try them."

Q. Now, some time in February of this year did you write a letter to the makers of Imdrin?

A. My husband did.

Q. Your husband did?

A. Yes.

Q. And he told them about the fine effects of Imdrin, is that right?

A. Yes.

Q. Between the time you wrote that letter and last night did anybody get in touch with you from the Imdrin makers?

A. No.

Q. I saw you last night at your home, is that right?

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A. Yes, you saw me at home. Nobody got in touch with me.

795 Q. Nobody got in touch with you between the time that that letter—

A. Yes. I really had forgotten he had written it.

Q. You had forgotten he had written it?

A. I really had, until you came last night and then I was surprised. It just came to me that quick. He wrote them. He wrote them it had done me so much relief, I remember him writing them that, that is what he meant by it. They did do me wonders.

Q. That would be something. From the time that you had this pain you were not working or anything like that?

A. No. I am just a housewife.

Q. And before that you were a housewife, too?

A. Yes.

Q. Some time today it was you went to see a Dr. Weisberg?

A. How?

Q. You saw a Dr. Weisberg, you went to see a Dr. Weisberg?

A. Yes.

Q. You are nodding your head. You mean "Yes"?

A. Yes.

Q. And he examined you and talked to you, is that right?

A. Yes, he examined me.

Q. Do I understand that you are still using Imdrin?

A. I am still using it, yes.

Q. When did you use it last?

796 A. I took two this morning because of the rain.

Q. Did you have pain?

A. No, but I take it for safety.

Q. Kind of as a preventative?

A. Yes. Now I won't take any until tomorrow some time.

Q. During the past, say, month or so have you had an occasion to use—

Mr. Callaway: He has been leading the witness right down the line. I didn't want to object too much. Let us cut out the leading questions.

Mr. Goding: All right. Will you read the question as far as I got?

(Question read.)

Mr. Goding: Do you object to that?

Mr. Callaway: I am objecting to it. I am going to object to it.

By Mr. Goding:

Q. During the past month or so have you had occasion to use Imdrin other than this morning?

Mr. Callaway: Objected to.

Trial Examiner Lipscomb: Objection overruled.

The Witness: Should I answer that?

Mr. Goding: Please do.

A. Well, sure. Especially in this weather, you know, with any kind of rheumatism you will get a little pain,
797 anything of that kind.

Mr. Callaway: I object to that answer and ask that the reference to rheumatism be stricken.

Trial Examiner Lipscomb: The reference to rheumatism will be stricken.

By Mr. Goding:

Q. Will you tell us now—try to concentrate on my question—why do you take the Imdrin?

A. Because I think it is helping me for those pains.

Q. One further question. And can you say whether or not Imdrin does relieve the pain?

A. It certainly does and I have told a lots of friends of mine that I use it.

Mr. Goding: That is all.

Cross-Examination by Mr. Callaway.

Q. What doctor was it that you went to first in regard to this?

A. I saw Dr. Murphy and Dr. Nagle. Both of them are together.

Q. Dr. Murphy and Dr. Joseph?

A. Dr. Nagle.

Q. Dr. Murphy and Dr. Nagle. Where is their office?

A. Clark and Chestnut, the Newberry. All doctors are in there. Murphy was mostly my doctor but when he
798 wasn't down Dr. Nagle used to attend me. They work together; they have the office together.

Q. Dr. Murphy was your doctor, you say?

A. Yes.

Q. Which Murphy is that now?
A. I don't know. He was a man about—he was in the last war.
Q. Had you been going to see Dr. Murphy before you went to see him about these pains?
A. That is the way I happened to go. A friend of mine told me to go there in August.
Q. I meant was that your first trip to Dr. Murphy?
A. Yes, in August and then I was treating up there until I took these things, you know. I haven't been back to him since.
Q. How hany trips did you make to see Dr. Murphy?
A. Oh, I don't know how many trips. It cost plenty.
Q. What?
A. It cost plenty, and the hospital and everything. I just can't figure the trips. I used to see him sometimes three times a week to get shots.
Q. Over how long a period of time was that?
A. From August up until I started to take them pills.
Mr. Goding: When you say "the pills" you mean Imdrin?
799 Mr. Callaway: I object to that.
The Witness: Yes.
Mr. Callaway: There is no point in your butting in like that.
Mr. Goding: I am sorry, if it please the Examiner. I think that for clarification of the record where—
The Witness: I haven't seen my doctor since here this May—or since the last of December.

By Mr. Callaway:
Q. You saw the doctor the last of December?
A. Yes.
Q. That was the last time you went to see him?
A. That was the last time I went to see him.
Q. Did you go to his office then?
A. I had to have him come to the hotel because I couldn't get out.
Q. In December when you saw him last that was where?
A. That was at the house.
Q. That was at the house?
A. Yes.
Q. And he came to see you at the house?
A. Yes.

Q. When you went to see Dr. Weisberg this morning what did he do?

A. Why, he just asked me questions.

800 Q. Just asked you questions?

A. Yes.

Q. And what kind of questions did he ask you?

A. Well, about my knee and he looked at it. He didn't ask me very many questions.

Q. He didn't ask you very many questions?

A. No.

Q. What were some of the questions he asked you?

Mr. Goding: Wait a minute.

The Witness: He asked me how old I was.

Mr. Goding: Excuse me a second.

Trial Examiner Lipscomb: Wait a second.

Mr. Goding: I object to this.

Mr. Callaway: We are certainly entitled to ask that question.

Trial Examiner Lipscomb: I think that he is entitled to ask that.

Mr. Goding: I am not sure I understand the purpose, if I may say so.

Trial Examiner Lipscomb: Off the record.

(Discussion outside the record.)

Trial Examiner Lipscomb: On the record.

By Mr. Callaway:

Q. What did the doctor ask you, Dr. Weisberg, when you went to see him this morning?

801 A. He asked me what was wrong and I told him.

Q. He asked you what?

A. He asked me what was wrong with me and I told him "arthritis" and I said I was doctoring and in the hospital and it didn't seem to be getting any better and my husband one day said, "Would you like to try those", you know what I mean. I said, "I will take anything to get well."

Q. I am talking about what your answers were to—or, rather, I am not talking about what your answers were so much but what I am asking is what were the doctor's questions to you?

A. He didn't say much of anything. He looked at my knee and I talked to him about my swelling but he said—he shook my knees and he said they were cracking. I said, "Where"? And he pointed to both of them. But he

didn't do much—he didn't say much of anything, to tell the truth. I wasn't in there only about a few minutes.

Q. And he did not go into a great long list of questions with you then?

A. No. I told him that I can walk now and am feeling good, I don't mind this weather at all.

Q. He didn't take any blood pressure?

A. No, he didn't take anything.

Q. He didn't take any X-rays?

A. No, he didn't take anything. He just shook my
802 knees like that.

Q. How long would you say you were in there talking to him?

A. Oh, it couldn't have been more than five minutes.

Q. Would you say about three minutes was the length of time you were in there?

A. About three minutes.

Q. Mrs. Klaus, do you have any aspirin tablets at home?

A. No. I never use aspirin.

Q. Do you ever take,—or have you ever taken any aspirin for this conditions?

A. What did you say?

Q. Have you ever taken any aspirin for this condition of yours?

A. Oh, yes, when I had that awful pain I used to take it. I would take a tablet or two and it wouldn't help me.

Q. What did you say?

A. I would take a tablet or two and it wouldn't help me, my pain was so great, so I cut it out entirely.

Q. How many did you take?

A. I took quite a few. So I got scared, you know.

Q. When was it that you were taking aspirin tablets?

A. All the time I had this pain this winter at nights when I tried to sleep.

Q. This past winter?

A. This past winter.

803 Q. Were you taking aspirin tablets along around in January and February?

A. Yes, and before that, too.

Q. And you did take them on up in January and February?

A. No, I didn't have so many in January and February. I took it mostly up in December and January, but Febru-

ary I cut it out. I said to my husband, "I don't want any more", because they claim they are bad for your heart, you know.

Q. Did you ever try both an aspirin and Imdrin?

A. No.

Q. Did you ever try both and aspirin and Imdrin together?

A. No.

Q. Well, now, when you took the Imdrin how many tablets would you take?

A. I would take two before each meal, as it says on the bottle.

Q. You took two before each meal and that is what it says on the bottle?

A. On the bottle.

Q. Then you took two before each meal. You took them regularly that way every day?

A. Every day when I was in such great pain, but I don't any more.

Q. For how long a period did you take two before your meals?

A. That I don't know but pretty near two months 804 straight I wouldn't miss.

Q. For about two months straight?

A. Yes.

Q. And then you got—

A. I got a little bit relief.

Q. That is when you did not take them regularly every day after that?

A. No. I didn't have any in the house for over a week, until last week I got some.

Q. You didn't have any—

A. And I didn't have any pain. My husband was away in Pittsburgh and I was caught in the rain one night and I got pretty wet. I just figured I had better get some.

Q. You didn't have any there in the house?

A. I didn't have any that night but I got some the next day.

Q. Did your pain stop the next day?

A. Not entirely; just a little bit I felt here.

Q. Did you have any aspirin in the house?

A. No. So I got them; the bottle is pretty near full, but I don't take it regularly now because I don't have any pains.

Q. When you were taking aspirin tablets back there how many a day did you take of them?

A. Oh, aspirins, I wouldn't take any but a few at night.

Q. You never took them regularly during the day like you did at night?

805 A. No.

Q. How many would you take at night before you went to bed?

A. Two.

Q. Did you ever take any aspirin tablets when you got up in the morning?

A. No. I never was very much for that aspirin ever since that. We seldom ever have any in the house.

Q. Now, Mr. Goding here, I believe, saw you last night you say?

A. Yes.

Q. He came out to your house to see you?

A. Yes.

Q. And did he request you to go to Dr. Weisberg this morning?

A. Yes.

Q. And that is how come you to go to Dr. Weisberg this morning?

A. Yes.

Mr. Callaway: That is all.

Mr. Goding: Thank you very much.

Trial Examiner Lipscomb: Thank you.

(Witness excused.)

MRS. INGEBORG LARSON was thereupon called as a witness for the respondents and, having been first duly sworn, testified as follows:

806 *Direct Examination by Mr. Goding.*

Q. You are Mrs. I. Larson?

A. Yes, sir.

Q. What is the first name?

A. Ingeborg.

Q. And you live at 6908 North Lakewood Street?

A. Yes, sir.

Q. And you are a housewife?

A. Yes.

Q. You have no occupation?

A. Well, I do a little sewing.
Q. You do a little sewing?
A. Yes.
Q. It is North Lakewood Avenue?
A. Yes, it is.

Mr. Goding: I should like to make the same statement with regard to this witness as I made with regard to all the preceding witnesses, that there will be medical testimony to be linked up with this lady's testimony.

By Mr. Goding:

Q. Now, Mrs. Larson, at some time you had some sort of pain?
A. Yes.
Q. Where was it?
A. In my knees.
807 Q. In both knees?
A. In both knees, yes.
Q. Any place else?
A. And at the upper joint of my thumb.
Q. Of both thumbs?
A. Yes.
Q. When did that first start to trouble you?
A. Well, it troubled me several years but about, to be exact, three and a half years ago Christmas time a friend give me a bottle of Imdrin and I took them and then—
Q. Before you come to that I want to ask you this question: Before you took the Imdrin were you treated by a doctor?
A. Yes, I was treated by a doctor. I had a physical examination and, of course, the doctor asked me if I had any teeth trouble or anything like that and I had at that time but it left me, it was in my arm at that time and then it went down in the knees and it has stayed in the knees since then. But I also went and fell and broke my hip three years ago in February, which hasn't been any good for the knees.
Q. Now, had you taken any medicine before this period when you took Imdrin, any other medicine?
A. Well, the doctor that I went to in the United Medical Center, he treated me for gall bladder trouble and—
Q. No, I am talking about medicine for your pains in the knees.
808 A. No.
Q. You hadn't taken any?

A. No.

Q. Had the doctor who had treated you or whom you had gone to for the pains in your knees and in your upper thumb joints, did he prescribe any medicine for you?

A. I don't know if he did or not, but, anyhow, he put me on a diet for a month.

Q. He put you on a diet?

A. Yes.

Q. Did that help?

A. Yes, it relieved me. So then it seemed that I didn't have much pain, just a little pain here, but I didn't pay much attention to that.

Q. Then did the pain come back?

A. Afterward the pain came back, yes, I think three and a half years ago and then—

Q. Did you see a doctor when the pain came back?

A. No.

Q. What was the reason for that?

A. I don't care much for doctors.

Q. What did you say?

A. I don't care much for doctors.

Q. What did you do then three and a half years ago for the pain?

809 A. Then my friend gave me this Imdrin.

Q. Who gave it to you?

A. My friend and I tried it and it seems to relieve and I have bought—

Q. Seems to relieve the pain you say?

A. Yes. So I keep on buying it then for that and then I fell down.

Q. You fell down?

A. Yes, in February. You see, that was at Christmas time I got the Imdrin.

Q. This last Christmas time?

A. No.

Q. Three and a half years ago?

A. Yes.

Q. And then the following February you fell down?

A. Yes. On the 10th of February it was three years since I fell down and then I went to the hospital and the doctor he said—the doctor that put my leg together, he said—

Mr. Callaway: I object to that. She can't tell what the doctor said.

By Mr. Goding:

Q. You can't tell what the doctor said. We will just forget that.

A. All right.

Q. After you first used Imdrin did you use it again,
810 Mrs. Larson, some more at some subsequent time?

A. Yes. Then when I came home, then I used it again.

Q. You used it again?

A. And I got the same result.

Q. The same result?

A. It gave me relief.

Q. It gave you relief?

A. Well, I don't expect a cure because all the doctors that I have been talking to say there is no cure.

Mr. Callaway: Just a minute. I object to that. Don't put that in the record.

Mr. Goding: It is in there and it was very spontaneous.

Mr. Callaway: I understand but I ask that it be stricken.

Trial Examiner Lipscomb: Let the testimony stand. Go ahead.

By Mr. Goding:

Q. Go ahead, keep on.

A. Then I read an article about Imdrin, that it wasn't any good.

Q. You read an article. Where was that?

A. Well, I don't know, in the Readers' Digest or just where it was.

Q. That it wasn't any good?

811 A. Yes. They said that aspirin could be just as good and I can't take aspirin, I can only take cal-aspirin, because the other aspirin make me sick. So I took that for some time but it didnt—

Q. What was this you took for some time?

A. Cal-aspirin.

Q. Cal-aspirin?

A. Yes.

Q. Go ahead.

A. That I can take, but aspirin I can't take because it makes my stomach sour. It didn't do me any good neither. So I had all my teeth pulled, the last one the 10th of April and I have taken no—before then I had taken no aspirin or nothing of any kind and I want to find out if the teeth pulling would do any good for me and it hasn't.

Q. It has not?

A. It hasn't because the last two weeks here my pain has been worse.

Q. Has been worse since your teeth came out?

A. Yes, since I got my teeth out, until I got a bottle of aspirin ten days ago.

Q. Aspirin?

A. Imdrin. And it relieved some of my pain but this kind of weather is no good for arthritis.

Q. Have you been taking Imdrin regularly?

812 A. Yes.

Q. Has it helped you?

A. Yes.

Q. It relieves your pain?

A. It relieves my pain and it has relieved some of the swelling in my knee.

Q. Let me ask this: Did you ever see me before I saw you out there for just a minute or two? Did you ever see me before in your life?

A. I haven't seen you.

Q. How did you happen to come here? Who did you get in touch with?

A. Mrs. Fortunate.

Q. Who is Mrs. Fortunate?

A. She is a lady that I did some sewing for and she is the one that give me Imdrin for a Christmas present.

Q. She gave you Imdrin?

A. Yes, and said it would be good for me.

Q. And said it was good for you?

A. And she phoned me a few days ago, about a week ago or so and asked me if I would say what I know about Imdrin. "Tell the truth", she said, "nothing else".

Mr. Callaway: I object to that.

The Witness: And that is all I know. I know it has relieved some of my pain. I don't expect a cure be-

813 cause every doctor said there is no cure.

Mr. Goding: Thank you very much.

The Witness: So as long as I can walk and get around I forget about my sickness.

Mr. Goding: I want to thank you very much. This gentleman here wants to ask you a few questions.

Cross-Examination by Mr. Callaway.

Q. What doctor did you go to see first?

A. It was a Dr. Ehrlich that lived out there near to us, neighbors to us, on Morse Avenue, and he went in the service.

Q. What was his name?

A. Dr. Joseph Ehrlich. He was a Jewish doctor.

Q. Ehrlich?

A. Yes. He was the one that sent me to the dentist the first time, but he isn't there any more, he lives out in Arizona and he is the only doctor that I had any belief in, you might say. He was a young man but he was a very good doctor.

Q. You say you took some cal-aspirin?

A. Yes.

Q. How long did you take the cal-aspirin?

A. Well, I don't take it all the time. When the pain isn't there I don't take anything because, as I say, I am busy and I forgot about my pain when I am busy, but
814 then when it started to ache, then I took a couple of cal-aspirins and it also would relieve once in a while, but not all the time.

Q. Did you take cal-aspirin regularly?

A. No.

Q. You did not take it regularly like you took the Imdrin then?

A. I took the Imdrin regularly. Sometimes I did forget to take them before I have my meal but I take it three times a day.

Q. And how many three times a day?

A. Oh, I take three each time.

Q. Three three-times a day?

A. Yes.

Q. The directions on the bottle say two, don't they?

A. Yes, but I thought that my pain was so hard I should take one more.

Q. You thought if two will do good one more will do more?

A. Yes.

Q. How long have you been taking these Imdrin tablets now?

A. Well, from this time I have only been taking it ten days.

Q. Ten days?

A. Yes.

Q. How long has it been since you took them before that?

A. Let's see. It was around before Christmas that I ran out of them and I think it was about that time I read about Imdrin, saying what it is supposed to be.

815 Q. And you haven't taken any since before Christmas, until the last ten days?

A. That is right.

Q. Now, then, during that period of time—

A. During that period of time I have taken about a hundred cal-aspirin and for the last—since the 10th of April, when I had my last teeth pulled, I have taken no aspirin or nothing for pain relief of any kind because I want to see if my teeth may have anything to do about it and it hasn't because—

Q. You had just as much pain as you had before you had your teeth taken out?

A. Yes.

Q. When did you say your hip was broken?

A. My hip was broken the 10th of March three years ago.

Q. The tenth of March three years ago?

A. Yes.

Q. What hospital did you go to when you had that?

A. I went to the Swedish Covenant Hospital.

Q. That is here in Chicago?

A. Oh, yes. It is out on Foster Avenue.

Q. And what doctor did you have?

A. I had a Dr. Theodore Oberg, I think it was. He has an office in the Pittsfield Building, but he also is a doctor out there.

816 Q. I believe you said you had some gall bladder trouble?

A. Yes. The doctor said—

Q. When was it that you had the gall bladder trouble?

A. That is ten years ago. That is when I had the gall bladder trouble. I have always been liking to eat fat meat and cream and butter and things and, of course, I had to cut some of that out.

Q. What doctor did you see about, for the gall bladder?

A. That was Dr. Holland. That was a doctor in the United Medical Center over on Jackson Boulevard. There were a lot of doctors that went together there I under-

stood and they did everything. You got everything there under one roof.

Q. Well, now, did you receive any treatment then for your gall bladder trouble?

A. Yes, I presume I did.

Q. How long a time did you receive treatment for that?

A. Just a month.

Q. Did your gall bladder trouble clear up completely?

A. I didn't know I had any gall bladder trouble at that time. I don't know it even now because I feel fine.

Q. What was the trouble with it?

A. They examined me and found that perhaps I had a little poison in the gall bladder that could do some harm in my years.

Q. And the doctor sent you to the hospital then.
817 Did you have any trouble with your knees then?

A. Yes. I wasn't feeling so good and everybody said, "You should have a physical examination, you are getting up in years."

Q. Were you having the trouble with your knees at that time?

A. Yes.

Q. And you went to this doctor?

A. And it relieved me.

Q. And he said the trouble was due to your gall bladder trouble, was that it?

A. Yes, it might be. He had to clear that up. He also told me there was seventy-five different arthritis, so if he got the right one he would be lucky.

Q. Then you had the same trouble with your knees when you went to see the doctor about the gall bladder trouble that you have had recently, did you?

A. Yes, I have, because I had an X-ray taken of my right knee at that time.

Q. And what did it show?

A. And there was some formation and—

Q. Just wait a minute. You can't tell what it showed, that is right.

A. I can't tell.

Q. But you did have an X-ray taken of your knees at that time?

818 A. That is right.

Q. Were both knees affected at that time or just one?

A. One knee was worse. This one here has never been so bad.

Q. Have you seen any doctor in the last day or two?

A. No. I haven't seen no doctor since I came from the hospital.

Q. Since you came from the hospital?

A. Yes, and the doctor—

Q. Wait just a minute. You did not see a doctor yesterday, last night or this morning?

A. No, I didn't. I haven't seen no doctor.

Mr. Callaway: Well, now, I ask that this woman's testimony be stricken then, your Honor.

Mr. Goding: She is confused, it is quite obvious.

Trial Examiner Lipscomb: What?

Mr. Goding: I say it is quite obvious that—well, let him finish his examination. I think I can clear it up.

Mr. Callaway. I think that is all.

Redirect Examination by Mr. Goding.

Q. Mrs. Larsen, did you see a Dr. Weisberg? Have you seen a Dr. Weisberg?

A. Why, I don't know. I seen all you fellows. I 819 don't know if you are doctors or whatever you are. You could just as well be a lawyer. I don't know.

Q. I am a lawyer but did you see—

A. I don't know a Dr. Weisberg.

Q. Dr. Weisberg?

A. I don't know a Dr. Weisberg either. I don't know any doctors.

Q. Did you go to—

Mr. Callaway: Just a minute. She stated that and that is purely leading from there on. It is bound to be. I object to it.

Mr. Goding: I beg the Examiner's indulgence. I think the witness, obviously, by her answer, she doesn't know the profession of the different people she has seen. She has seen a number of fellows, as she says, and I think I can clarify the point.

Trial Examiner Lipscomb: The Trial Examiner will indulge you.

By Mr. Goding:

Q. Do you remember within the last couple of hours you went to Mr. Gettleman's office?

A. Yes.

Q. Did somebody ask you questions about your condition?

A. Yes. I was in such a—oh, yes, I am very sorry.

Mr. Callaway: That is alright.

820 The Witness. Oh, yes, I have seen a doctor.

Mr. Callaway: Who was it?

The Witness: He didn't tell me his name. He only had a—

Mr. Goding: Hook?

Mr. Callaway: Hook nose?

The Witness: Yes.

Mr. Goding: That is the man.

Recross Examination by Mr. Callaway.

Q. How did you know he was a doctor, or how do you know he was a doctor?

A. Well, I don't know. He didn't tell me his name or he didn't present me—

Q. And he didn't tell you he was a doctor?

A. And he didn't tell me he was a doctor. Nobody told me that there was any doctor.

Q. This gentleman with the hook nose asked you some questions?

A. Yes.

Q. What questions did he ask you?

A. The same questions pretty near as you gentlemen have asked me and he wrote down what he asked me, so he can tell you.

Q. How long did you talk to that fellow, would you say?

821 A. I don't know. About five, eight, ten minutes, to give all the answers to the questions that the doctor asked me, if he was a doctor. I don't know. He didn't tell me that he was a doctor.

Q. You saw him in the lawyer's office, Mr. Gettleman's office, is that right?

A. Yes. I didn't know. Is that a doctor or a lawyer, Gettleman?

Mr. Goding: He is a lawyer.

The Witness: Well, I don't know. I went up there because—

By Mr. Callaway:

Q. Why did you go up there?

A. Because Mrs. Fortunato, she said to me if—she had given me the first bottle of Imdrin and she said, "Will you testify if it was any good or bad or whatever it was? We don't want you to say anything."

Q. Did she ask you to go up to Mr. Gettleman's office?

A. There was a gentleman that phoned to me yesterday and asked me to come to the office, because I didn't know where.

Q. He asked you to come to Mr. Gettleman's office?

A. Yes.

Q. And then you went up there today?

A. Then I went up there today and I was, I suppose—

Q. How many folks talked to you up there today?

822 A. Well, just the doctor that examined me. The other man that took me over—

Q. The man with this man was a doctor, is that true?

A. Yes, that is the only one.

Mr. Goding: I will clarify it.

The Witness: And the other man that took us over here, he told us something about the pictures on the wall and things like that.

By Mr. Callaway:

Q. Took you over where? You mean brought you over here?

A. Yes.

Q. And did they bring you direct from Mr. Gettleman's office over here?

A. Yes.

Q. It hasn't been over an hour, then, since you talked to the man that you later understood was a doctor, that you now understand was a doctor, is that right?

A. Yes.

Q. Just about that?

A. Just about that.

Q. There weren't any X-ray pictures taken, were there?

A. No.

Q. Of your leg or of your knee or anything?

A. No. He wanted to look at my knee, which wasn't a very good sight for him.

823 Mr. Callaway: That is all.

By Mr. Goding:

Q. I want to ask you a question. I point to this gentleman here. Was he the man who examined you?

A. Yes.

Q. Do you recall whether somebody introduced you to him as Dr. Weisberg?

A. Nobody introduced me to Dr. Weisberg, and the doctor didn't say his name, or the lawyer, whatever he is, he didn't say anything.

Mr. Goding: That is all.

Trial Examiner Lipscomb: You are excused. Thank you very much.

(Witness excused.)

DR. SEYMOUR W. WEISBERG was thereupon recalled as a witness for the respondents and, having been previously duly sworn, testified further as follows:

Direct Examination.

Trial Examiner Lipscomb: Doctor, I believe you have been sworn previously in this proceeding?

The Witness: Yes.

Trial Examiner Lipscomb: I advise you that you are still under oath.

By Mr. Goding:

Q. Doctor, you are the same Dr. Weisberg who 824 previously testified in this case?

A. I am.

Q. Then we shall dispense with any repetition of background and qualification. Before we go any further, Doctor, the witness who just preceded you on the witness stand, you were here, were you not, when I asked her if you were the gentleman who asked her medical questions and examined her, is that right?

A. Yes, sir, that is right.

Q. And is it a fact that you did conduct a brief examination of that lady?

A. That is right.

Q. First of all, Doctor, did you last evening at your office examine one Peter J. Maretta?

A. Yes, I did.

Q. Will you tell us very briefly the nature of your examination and your diagnosis of his condition?

A. May I refer to notes.

Q. You certainly may.

A. Mr. Peter Maretta, twenty-seven years of age, living at 1811 South 56th Avenue, Cicero, told me yesterday that some months ago, probably in February, he felt some pain in his right groin and also in his right knee and along the right tibia. He stated, too, that he had seen a doctor, who had advised X-rays, but he did not feel
825 that the expenditure of the money was warranted, so he simply took Imdrin in an attempt to obtain relief. He took, he told me, one tablet three times a day and he added that within a month he had obtained relief.

At the time he saw me yesterday he stated that there was no longer any pain.

I examined him rather carefully and thoroughly. I took his pulse. I found his pulse rate to be 84, his temperature 98.6 degrees, his blood pressure 154/110, his weight 191 pounds and the physical examination revealed nothing of significance.

Q. Revealed what, Doctor?

A. Nothing of significance.

Q. Now, you referred, using technical terms, to the areas of his body where he had pain. Will you repeat that and tell us just where they are?

A. Yes. He stated that he had had pain in the region of the right groin.

Q. Where would that be, Doctor?

A. Essentially the juncture of the leg with the body. In the region of his knee and along the course of the right shin bone.

Q. Now, Doctor, on the basis of your examination did you make what might be called a clinical diagnosis of the condition that he previously had?

826 A. Yes. I pointed out, of course, that at the time I saw him there were no findings. He was compelled, therefore, to depend on his own statements to establish a diagnosis and it is my belief that earlier, at the time that pain was present, he probably in all probability had what we call muscular rheumatism or fibrositis.

Q. Will you tell us next about,—and please feel at liberty to refer to your notes with regard to all these people,—will you tell us next about Mrs. Rhoda Lipsie?

A. She is a sixty-one year old female, who told me that she had had pain in her left hand for a period of three years. She told me the things that she had—she volunteered the information that she had taken Imdrin as early as a year ago. She took one tablet four times a day, according to her statement and in a relatively short period of time obtained permanent relief. I limited my examination to the affected parts and I found unmistakable evidence that there was Heberden's nodes.

Q. Before you go any further will you explain that in layman's language, if you can?

A. Yes. I will just finish that sentence. Heberden's nodes on the index and the little finger of the left hand. They were located at the distal interphalangeal articulations.

Q. Distal interphalangeal articulations?

A. Yes, and she pointed to those as the site of her
827 previous pain.

Q. Will you explain that term and reduce it so lay language, if you can?

A. The term refers to a rather characteristic deformity of the joint, which is found associated with hyperthrophic arthritis, degenerative arthritis.

Q. Doctor, had you completed telling about your observation and examination of the lady?

A. Essentially, yes.

Q. On the basis of that what was your diagnosis?

A. Hypertrophic arthritis.

Q. Hypertrophic arthritis?

A. That is right.

Q. Will you tell us next about Mrs. Ida Klaus?

A. Mrs. Klaus was a rather obese female, who told me that she had pain in her right knee in September of 1950. The pain at that time was rather constant, although on several occasions before that she had accidentally bumped the knee against the bed and she thought perhaps that might have had something to do with the aggravation of the condition.

Mr. Callaway: I couldn't get that.

The Witness: She said that she had bumped her knee against the corner of the bed and she thought possibly that might have had something to do with the presence of the pain.

828 I don't know whether or not this matter is particularly important from my standpoint, but she did

state that she had taken Imdrin from September to November of last year. She took, she said, two tablets three times a day rather intermittently. She had consulted a doctor who took an X-ray of the knee and who informed her that the X-ray showed presence of arthritis.

Mr. Callaway: I object to that statement.

The Witness: That was part of the history.

Mr. Callaway: That is not admissible.

Mr. Goding: I think that is part of the history of the doctor.

Trial Examiner Lipscomb: What was the question, Mr. Reporter, that was asked? Will you read it back?

Mr. Goding: I think it was at the point where another doctor had told her what she had.

Mr. Callaway: She told this doctor that the other doctor told her she had arthritis and I don't think that that can come in indirectly if it cannot come in directly. That certainly can't come in directly, so I object to that statement and ask that it be stricken.

Mr. Goding: I would like to be heard on that. I think that this is all part of the comprehensive history that the doctor took and so far as the doctor is concerned at that moment he was certainly not concerned with the ad-
829 missibility under strict rules of evidence that we seem to be following and I think to get the whole picture it is proper to come in.

Trial Examiner Lipscomb: Objection overruled.

Mr. Callaway: Exception.

The Witness: I might add at this point that that statement would be part of any history I would take on any patient at any time. One attempts to obtain as many facts as possible.

By Mr. Goding:

Q. All right, Doctor.

A. Again I confined myself to examination of the affected part. As I had mentioned, the woman was an obese individual. There was no evident deformity of the right knee, there was no swelling, there was no heat, but most decidedly on motion there was crepitus.

Q. There was what, Doctor?

A. Crepitus, which means a grating sound on motion.

Q. Is that because of bones?

A. Essentially part of the bone, yes, sir.

Q. All right.

A. And my diagnosis in this instance was hypertrophic arthritis and the diagnosis was based on the fact that we were dealing with a rather elderly obese female who complained of pain in the knee and on examination there was crepitus. All those things are a salient feature in the
830 diagnosis of hypertrophic arthritis.

Q. Have you completed with her now, Doctor?

A. Yes, sir.

Q. The next then would be Mrs. I. Larsen.

A. Yes. She is sixty-four years of age and again an obese female. I stress the obesity in this case and the last because obesity undoubtedly plays a role in the production of the hypertrophic form of arthritis and that, by the way, is a form of arthritis, as I mentioned on another occasion, that tends to appear in more elderly individuals. She was a rather garrulous individual, who went into great detail about a number of things which were quite irrelevant I thought. However, in essence she did tell me that the pains in her knees first appeared around five years ago and I think she mentioned that some friend first urged her to take Imdrin about three and a half years ago and this particular medication provided much relief.

There is still some pain on occasion but she feels that it is not at all as severe as it had been previously. She has noted that particularly if the weather is inclement she feels some pain, or if she is somewhat too active she is inclined to experience pain in her knees.

She presented what I thought was definite evidence of hypertrophic arthritis. All in all her case was similar to that of the previous one. She had crepitus in both
831 knees it happens, but particularly of the right. She had, in addition, a Heberden's node of her left little finger. I felt rather strongly that the combination of her age, her obesity, the localization of pain in the right knee, crepitus in the knee and the presence of the Heberden's node established the diagnosis of hypertrophic arthritis.

Q. Doctor, are you through with Mrs. Larsen?

A. That is right.

Q. And that was hypertrophic arthritis?

A. That is right.

Q. Did you examine a gentleman by the name of King Hayes?

A. Yes, I did.

Q. Will you tell us about that, Doctor?

A. Mr. Hayes is fifty-four years of age.

Q. How old?

A. Fifty-four. He stated that he had first become aware of the onset of swelling and pain in both metatarsal phalangeal articulations in 1932.

Q. Where would that be?

A. I will explain that in just a minute. He stated that rather suddenly there appeared pain, swelling and marked tenderness of the joints of both big toes; also the joint situated between the toe itself and the foot. Since that time he has had five attacks, approximating it, he wasn't quite sure of the exact number. He had consulted a
832 number of physicians in connection with the episodes. He was told by at least one, probably more than one—

Mr. Callaway: I object to that, what he was told by the other physician.

The Witness: I might point out this is the story as he related it to me.

Mr. Callaway: Yes, I understand that but I don't think you can put in here indirectly what you can't put in directly.

Mr. Goding: I think this is all part of the history.

Trial Examiner Lipscomb: Objection overruled.

By Mr. Goding:

Q. Go ahead, Doctor.

A. I was, of course, attempting to elicit the facts which would help me in establishing a diagnosis.

Q. Just tell us what he did tell you. You are permitted to do it.

A. I wanted to know, of course—well, strike that, if you will. He stated that—I can't say that.

Q. Yes, you can, Doctor. I am telling you are at liberty to do it.

A. All right. He had been informed on the basis of laboratory studies that he had gout.

Q. Gout?

A. Gout, that is right. He heard of Imdrin, or so
833 he stated, about five years ago, at which time he sent his wife out to purchase some. He took some of the medication and felt much better shortly thereafter.

At the present time he stated that he had no pain and no discomfort in his joints and his joints were perfectly normal.

Examination by me confirmed his last statement. In all respects the particular joints to which he had referred were quite normal. There were no findings at the time of my examination which, I might say, would be in keeping with the earlier established diagnosis of gout, because between the gout episodes the findings by and large tend to disappear, unless the situation is of such chronicity that the abnormalities become permanent.

Q. In any event, Doctor, what was your diagnosis on the basis of your examination and history?

A. My final diagnosis in this instance was gout, based on the clinical history presented by the patient.

Trial Examiner Lipscomb: Based upon clinical history, Doctor, but not upon any visible physical tangible things that you could measure and determine on the patient at the time you examined him?

The Witness: That is correct, yes, sir, except the very absence of findings at the time tended to confirm the diagnosis.

834 By Mr. Goding:

Q. Now, doctor, the next gentleman is Arthur Fremault. Will you tell us about him?

A. He is a rather simple—

Q. These people will testify themselves.

Trial Examiner Lipscomb: Just a moment.

Mr. Callaway: There is this, you understand. He is bringing out by this doctor here and presenting through this doctor hearsay testimony as to the effect of Imdrin and I object to it and ask that it be stricken.

Trial Examiner Lipscomb: I am going to strike so much of the doctor's testimony in which he bases his diagnosis that the patient before him had gout upon the statement of the patient that he had been told previously by a doctor that he had gout. I think that is—

Mr. Callaway: That does not go to the basis of what I am talking about. The basis of what I am talking about at this time is that in each one of these histories which he recited it includes the statement as a fact that the witness took Imdrin and got relief. Now, that is not a basis—I mean that is putting into evidence directly through this doctor, and it comes from the witness,—I mean the patient, you understand. In other words, I don't think he can make a witness as to the efficacy of Imdrin through this doctor by what these patients told him.

835 Mr. Goding: So far as that is concerned I would concede that any particular statements made by the doctor with regard to—strike that, please.

I will concede that any recitation by the doctor of facts stated by these various people concerning the results from the use of Imdrin is not relevant so far as his testimony is concerned and to that extent I won't attempt to argue their competence or admissibility. That is, this aspect of what he is reciting from what they told him. If counsel wants to have that aspect stricken, I wouldn't object.

Mr. Callaway: I ask that it be stricken, every one of these recitals.

Trial Examiner Lipscomb: Off the record.

(Discussion outside the record.)

Trial Examiner Lipscomb: Back on the record.

Mr. Goding: We would agree that the testimony of this witness of the statements given him by the various people whom he has testified he has examined, concerning the effects upon them from the use of Imdrin, may be stricken, may be treated as stricken from the record.

Trial Examiner Lipscomb: Is that all right?

Mr. Callaway: Yes.

Mr. Goding: If we may go off the record.

Trial Examiner Lipscomb: Off the record.

836 (Discussion outside the record.)

Trial Examiner Lipscomb: Back on the record.

By Mr. Goding:

Q. Now, Doctor, in view of the ruling of the Examiner striking part of the reference that you made to what Mr. Hayes told you, will you now explain, without referring or basing in any way your diagnosis on this recitation of the diagnosis by a previous doctor submitted to you by Mr. Hayes, will you now explain your own diagnosis of gout or gouty arthritis?

A. Yes.

Q. All right, sir.

A. I had stated in a rather positive fashion that the individual had gout on the basis of,—and I based my diagnosis on statements which, of course, are not admitted. However, even though we omit such evidence I can state quite definitely that I would entertain as my first diagnosis in the list of tentative diagnoses gout.

That, as has been pointed out, would be a clinical diagnosis but it would be based on some fairly good evidence.

The individual in question told of pain and swelling and tenderness, stated that it first appeared in those joints which are in most instances first involved in gout. The location, as a matter of fact, was so typical that anyone who attempts to diagnose the condition of such an
837 individual would have to consider first the diagnosis of gout. He would then have to rule that out of the diagnosis in effect.

Now, in the absence of concrete evidence, such as blood chemistry, he cannot state with absolute confidence that the man had gout, but we have to state that we have to put the diagnosis of gout in a list of ten diagnoses. In the order of lesser diagnosis I would put such things as hypertrophic arthritis and others.

Q. Let me ask you this, Doctor: If it developed from a more extensive diagnosis involving an examination of blood and urine and X-ray and a great number of other things that you use in a more extensive diagnosis, can you say, Doctor, whether on the limited basis of your examination of this man that it would be some form of arthritis?

A. Yes, surely.

Q. All right. I am going to ask you now whether that is true with regard to all of these people concerning whom you have testified, with the exception of Mr. Maretta, whom you diagnosed as having had muscular rheumatism and I think fibrositis, would you say that is correct?

A. Yes, that is correct.

Q. State whether or not you are satisfied that even with a more extensive examination, with all the various kinds or types of examinations that you put each one of these through in order to complete a diagnostic ex-
838 amination, that you are satisfied that each one of them would have some form of arthritis, is that right?

A. That is right.

Q. With the exception of Mr. Maretta?

A. Correct.

Q. Now we come to Arthur Fremault, to whom you have already made reference. Will you tell us about him, Doctor?

A. He is a rather remarkable individual by his looks, in that he looks much, much younger than his stated age. He claims to be seventy-nine and appears decidedly younger than that. In any event he, too, proved to be a rather garrulous individual and stated, among other

things, that he had been a tailor and as a result of his occupation and because of the posture he was compelled to assume he suffered some pains in the back over a period of years. However, he some time later developed pain in the region of his right shoulder. That occurred toward the end of last year.

He was disinclined to consult any doctors, he didn't see a need to have any X-rays taken. He did, however, take Imdrin, two tablets four times a day.

Q. Don't tell us the results, Doctor, that he gave you. For how long did you say?

A. Some time in 1950. How long I don't know. If I can't state the results I should have made another statement earlier. I should have mentioned earlier that
839 he had had pain on motion in his shoulder.

Q. Pain on motion?

A. Yes, that is right. On examination I found, as I indicated, an individual who appeared much younger than his stated age. Nutrition fair. There was a kyphosis of the spine and there was rather marked crepitus of both shoulders.

On the basis of his history and on the basis of his age and the finding of crepitus I made a diagnosis of hypertrophic arthritis.

Q. Now, Doctor, I ask you with regard to Mr. Fremault whether if upon a more extensive diagnostic examination, going through all of the various routines that you would put someone through suspected of having some form of arthritis, whether you feel that the result of that would be a diagnosis of some form of arthritis?

A. I am quite sure that the diagnosis would be confirmed.

Q. Would be what?

A. Confirmed.

Q. In any event, whether it is confirmed as to this specific type of arthritis, you feel sure that it would be some form of arthritis, is that what you are saying?

A. More than that. I feel it is that type of arthritis.

Q. Are there any others that you have examined whom you have not told us about, making this examination complete?

A. No.

840 Mr. Goding: I think that is all.

Cross-Examination by Mr. Callaway.

Q. Now, Doctor, Peter J. Maretta, I believe you said, did you not, that your findings at the time you examined him were negative?

A. That is correct.

Q. Now, such diagnosis as you made was based entirely and only on what he told you?

A. Yes, sir.

Mr. Callaway: I think I am entitled to have that diagnosis on Maretta stricken and Maretta's testimony.

Trial Examiner Lipscomb: Off the record just a minute.

(Discussion outside the record.)

Trial Examiner Lipscomb: Back on the record.

The Trial Examiner will take under advisement your motion on behalf of complainant to strike the testimony of the witness Peter J. Maretta and the doctor's testimony with reference thereto.

By Mr. Callaway:

Q. Now, Doctor, the next person you talked about besides Mr. Maretta was Mrs. Rhoda Lipsie.

A. Yes, sir.

Q. Where did you see her?

841-2 A. In an office at 10 South LaSalle Street.

Q. In Mr. Gettleman's office?

A. I don't believe it was. I think it was one of the suite of offices.

Q. Occupied by Mr. Gettleman?

A. I don't think so.

Q. Well, was it in your office?

A. No, it was not.

Mr. Goding: He said it was in a suite.

The Witness: It wasn't literally his office, no.

Mr. Goding: He is in that same suite.

By Mr. Callaway:

Q. Why did you examine her in there?

A. What is it?

Q. Why did you examine her in there? What was the occasion for you examining her in there?

A. I was informed that the individual would be in there and that I would be asked to establish a diagnosis if I could.

Q. Who informed you of that?
A. That was Mr. Gettleman.
Q. What was the basis of your diagnosis of her in addition to the history?
A. My objective evidence was the presence of the Heberden's nodes.
Q. Now, are Heberden's nodes ever found in any
843 other condition except arthritis?
A. I don't believe they are.
Q. Is there any other method of determining whether you are dealing with true Heberden's nodes in addition to merely looking at them?
A. The X-ray evidence is all,—is of some value.
Q. What is that?
A. The X-ray evidence is of some value.
Q. The X-ray evidence is of some value?
A. That is right.
Q. You had no X-ray evidence in this case?
A. No, sir. However, that is not essential for the diagnosis of Heberden's nodes.
Q. Let's see. It is used, though, I believe you said, is it not?
A. Yes, that is right.
Q. If an X-ray examination of what you looked at on this patient's fingers and called Heberden's nodes developed that it was not Heberden's nodes, then your diagnosis would rest entirely on what she told you, would it not?
A. But those were Heberden's nodes.
Q. Can you be sure they were Heberden's nodes without an X-ray?
A. Yes, sir.
Q. I thought you said a minute ago that an aid in
844 diagnosing whether or not what is thought to be Heberden's nodes is Heberden's nodes was X-ray?
A. But they are not essential for the diagnosis.
Trial Examiner Lipscomb: Off the record.
(Discussion outside the record.)
Trial Examiner Lipscomb: On the record.
The doctor is temporarily excused from the witness stand in order to permit other witnesses to testify this afternoon. It is understood that the doctor will return tomorrow morning.
Mr. Goding: Yes.

(Witness temporarily withdrawn.)

KING HAYES was thereupon called as a witness for the respondents and, having been first duly sworn, testified as follows:

Direct Examination by Mr. Goding.

Q. You are Mr. King Hayes?
A. Yes, that is right.
Q. Where do you live, Mr. Hayes?
A. 1958 West Walnut Street.
Q. What is your occupation?
A. Bartender.
Q. Some time back you had some pain?
A. Yes, sir.
Q. Where was it?
845 A. In my feet.
Q. What part of your feet?
A. My toe and my feet swelled up.
Q. When was that?
A. In 1932.
Q. Did you get it after that?
A. Oh, yes, three or four times since then.
Q. Some time you took Imdrin?
A. Yes. I didn't take Imdrin until way late, after I had been to doctors and things like that. Then after I went to the doctors and they taken an X-ray of my feet and everything, when I came back this last time where I am working at now, about two years and a half ago—
Q. About two years and a half ago it came back again?
A. About two years and a half ago it came back again.
Q. So I understood you to say that between 1932 and two and a half years ago you had been to doctors?
A. Oh, yes.
Q. And you had your feet X-rayed?
A. Yes.
Q. Did they give you some—
Mr. Callaway: I object to leading questions.
Mr. Goding: I am trying to shorten this.
Mr. Callaway: I understand that but we don't want to sacrifice—we can shorten the hearing by just adjourn-
846 ing here. I want to object to leading questions.
Trial Examiner Lipscomb: The objection is sustained.

By Mr. Goding:

Q. What did these doctors do for you?

A. They just give me medicine and Dr. Corbette, he X-rayed me, he X-rayed my feet.

Q. They gave you medicines and this doctor that you referred to X-rayed your feet?

A. Yes.

Q. Did they do anything else for you?

A. Just gave me pills and something to take.

Q. What were those pills, do you know?

A. I don't know what it was. They were just little white pills in a box. They give me a box of them.

Q. Did any of the things that the doctors did then relieve the pain?

A. They relieved the pain but not the swelling.

Q. It did relieve the pain?

A. Yes.

Q. But not the swelling?

A. No.

Q. For how long a period of time after you did what the doctors told you to do was the pain relieved, for how long a time?

A. Oh, the pain was relieved. Then after the pain 847 was relieved, then the swelling, it somehow would go away. Then the next time it came back, then I got it in both my feet and I used everything they told me to use, hog butter and leeches and stuff like that to try to get the swelling out. The pain would go away but the swelling wouldn't go away.

Q. Two and a half years ago did you see a doctor when you had the recurrence of the pain?

A. Yes, I did. I had him come to the house.

Q. What did he do for you?

A. He gave me some capsules to relieve the pain.

Q. Did they help you?

A. They just relieved the pain, that is all. The swelling, it takes about, I guess, a week or two to go away after that.

Q. Did you at some time buy some drug yourself without a doctor's advice?

A. I used anything and everything I could possibly find. I used hot water and salt and a leech and then I used gasoline.

Q. I am talking about what you did yourself,—what you

bought yourself. Did you buy something yourself without a doctor's advice?

A. That is the time I come after the Imdrin.

Q. You got Imdrin?

A. Yes.

Q. When was that?

848 A. That was here—the last time I had it upstairs there, that was about two years ago.

Q. About two years ago?

A. Yes.

Q. And how long before you bought the Imdrin had you seen a doctor?

A. I seen a doctor five or six times before I bought the Imdrin.

Q. I mean how long before you get the Imdrin did you last see a doctor?

A. Oh, it was close to two weeks before I went back to Brown and then the way I got the Imdrin is—I was sitting around the radio and they were broadcasting.

Q. Let us not go into how, but you got it?

A. Yes.

Q. Will you tell us what effect it had on the pain in your feet or any effect it had at all on you?

A. It took the swelling out after I took it. I haven't got it any more.

Q. Before you used the Imdrin did you have pain in your feet?

A. Before I used it?

Q. Yes.

A. Sure I would have pain in my feet.

Q. What did it do with regard to the pain, if anything?

849 A. It took the pain and swelling out.

Q. The pain and swelling was relieved, is that what you are saying.

A. Yes.

Q. How long did you use Imdrin, how many weeks or months or days?

A. I took three bottles.

Q. Over how long a period?

A. I guess about four weeks or something like that.

Q. About four weeks?

A. And then I went back to work.

Q. Then you went back to work?

A. Yes.

Q. During this time you had been unable to work, is that right?

A. Oh, sure.

Q. Did you take Imdrin after that?

A. I taken some just when I have pain in my elbow or somthing like that, to get the pain out of my elbow. I haven't had any more trouble with my feet.

Q. No trouble with your feet for about two years now?

A. Yes. My feet has been going good.

Q. Some time ago did you write a letter to the makers of Imdrin?

A. Yes, because Gabriel Heater—I gave Gabriel
850 Heater a letter for advertising it, thanking him for saving me money, for helping my feet, not having to pay doctor bills.

Q. And loss of time from work, is that what you mean?

A. And loss of time from work. I lost a lot of money.

Q. Between the time that you wrote this letter—when was that,—November 1950?

A. Yes, I think it was.

Q. Now, between that time and last night did you see anybody representing the Imdrin people?

A. Yes. A man came down last night to have me come here.

Q. Who was that man?

A. I don't know who he was.

Q. Don't you recognize me?

A. Was it you? I was so busy that I didn't have time to talk. The boss was out and I was all by myself.

Q. Up to last night, between the time you wrote the letter and last night had you talked to anybody from Rhodes Pharmacal, the makers of Imdrin?

A. No, I haven't.

Q. In any event you went to see Dr. Weisberg today before you came up here?

A. Yes, sir. He examined my feet.

Mr. Goding: Thank you very much. This gentleman will have a couple of questions for you.

851 *Cross-Examination by Mr. Callaway.*

Q. You say you were off from work with your feet?
A. Yes, sir.
Q. They were very painful to you, I imagine, weren't they?
A. Oh, yes. You couldn't lay a sheet under there when they swelled up.
Q. How long were you off from work with your feet the last time, you say?
A. The last time I was off for, I guess, about three and a half weeks—let's see, about four weeks.
Q. And when was that?
A. I went back to work, let's see now. I have been working two years. It has been about nearly three years, because I have been working two years straight now since that happened.
Q. That was the last time you were off from work?
A. That was the last time.
Q. You were off about four weeks?
A. Yes, sir, that is right.
Q. You stayed off your feet practically the whole time, didn't you?
A. Yes, sir.
Q. And were you taking Imdrin during that period of time?
A. I took them—I wasn't taking them during that period of time, but just as soon as I got it. I was off
852 at the time, my feet were swollen and I heard the broadcast. That is when I got it.
Q. It was during that period of time that you were off from work?
A. Yes, sir, that is right.
Q. And how long had you been off from work before you got the,—before you heard the broadcast about Imdrin?
A. Oh, I was off from work I guess about two and a half weeks.
Q. Two and a half weeks?
A. Yes, sir.
Q. And then, we will say, you took the Imdrin and you were off your feet about a week and a half after you started taking it, is that right?
A. That is right.
Q. You had been off about two and a half weeks before you started taking the Imdrin?

A. The first time I was off about a month.
Q. I meant the last time.
A. Oh yes, that is right.
Q. Now, then, the time before that that you were off from work with your feet, when was that?
A. That was in 1932.
Q. In 1932?
A. Yes.
853 Q. In other words, you didn't have any trouble sufficient, at least, to make you lay off from work since 1932 until about three years ago, is that right?
A. I was off twice in between. In 1932 I was off a month and a week.
Q. You didn't have any Imdrin then in 1932, did you?
A. No, sir.
Q. You were off you say about a month?
A. About a month and a week at that time.
Q. About a month and a week at that time?
A. Yes.
Q. And you stayed off your feet then, is that right?
A. Yes, I stayed off my feet.
Q. Then after having stayed off your feet that long did the swelling go down?
A. Yes, the swelling went down.
Q. Then did the pain go away?
A. It all went away.
Q. And you went back to work?
A. I left that job and went to Revere Brass Company and I went to work there and it swelled on me again.
Q. And each time they have swollen on you you have had to lay off from work?
A. Oh, yes.
Q. And when you stay off your feet while you are
854 off from work the swelling goes down and the pain leaves, is that correct?
A. Yes.
Q. Is that about what has happened each time that you have had trouble with your feet?
A. Yes, sir.
Q. And each time it was four to five weeks, as I understand it.
A. Yes.
Q. Is that right?
A. That is right.

Q. Mr. Hayes, I believe you said you heard a radio advertisement on Imdrin?

A. Yes, sir, that is right.

Q. Do you remember what that radio advertisement was, what it said?

A. The only thing I heard him say he was speaking about Imdrin, that it was good for swollen feet, you know, and things like that, so when he said "swollen feet" I just called my wife and said, "Go see if you can find them."

Q. Did he talk about swollen feet and pain and stiffness and things like that?

A. Yes.

Q. That was just what you wanted, wasn't it?

A. To get that pain and things and stuff out.

855 Q. What you wanted, I guess, was to get rid of all pain and stiffness and swelling, is that right?

A. That is right.

Q. If you could find something to get rid of the pain and stiffness and swelling, why, you would feel as if you are cured, wouldn't you?

A. Yes, I would. It hasn't hit me any more yet because I have been staying two years on one job.

Mr. Callaway: I believe that is all.

Mr. Goding: Thank you very much, Mr. Hayes.

(Witness excused.)

ARTHUR FREMAULT was thereupon called as a witness for the respondents and, having been first duly sworn, testified as follows:

Direct Examination by Mr. Goding.

Q. You are Mr. Arthur Fremault?

A. Yes.

Q. Where do you live, Mr. Fremault?

A. 923 East 55th Street.

Q. That is Chicago?

A. Chicago 37.

Q. What do you do?

A. Tailor.

Q. You are a tailor?

856 A. Yes.

Q. Where do you work?

A. Nowhere.
Q. You are not working now?
A. No.
Q. But tailoring is your work, your profession?
A. Yes.
Q. Sometimes you have had some pain in your body?
A. Not any more.
Q. But at some time you did?
A. Yes.
Q. Where was the pain?
A. Here in the side, the loin.
Q. The lower back on the right side, is that where you are pointing to?
A. The full lower back.
Q. The full lower back?
A. Because I am a tailor and I sit this way and my body falls down,—and I have this pain. It is the only time in my life, you know.
Q. When did you first start to have that sort of pain?
A. Oh, on the side here a couple of years ago, but it keeps on all the time, but that shoulder and my arm—
Q. Your shoulder and your arm, when did that start?
A. That started about October or November last year.
857 Q. October or November of 1950?
A. Yes.
Q. Did you have it before that at all?
A. No.
Q. Did you see a doctor for any of your ailments?
A. No, no, they couldn't help me. I go to the drugstore and I buy this to massage me, I buy that to massage me and I got medicine and nothing helped me.
Q. What kind of medicine did you buy?
A. I don't remember any more. Then the landlady massaged me with camphor oil.
Q. The landlady massaged you with camphor oil?
A. The landlady massaged me with camphor oil and it didn't help, too.
Q. Did you buy any pills?
A. No, no. I didn't even take them. But then I hear Gabriel Heater, "Imdrin, Imdrin, Imdrin" and then I go and buy that. I couldn't stand it any more, I was suffering all the time. And then I go and buy it. I went down to the drugstore and I asked for a bottle of Imdrin. "How

much"? "Three dollars." "Oh, three dollars is lots of money." I tell you, it isn't that I am stingy, I don't look on that, but I am old age. I am on old age and I got sixty dollars on old age. Then I pay thirty dollars for my room and I have got thirty dollars left for the month,
858 I have got to make it, and three dollars was much money. And when Gabriel Heater come out on the radio and asked everybody to take a chance, so I bought it.

Q. So you bought some Imdrin?

A. Yes, and I got sixty left.

Q. You have got sixty left?

A. Because there is seventy-two in a bottle.

Q. You used twelve?

A. I used twelve, in the morning before my meal, on the noontime, in the afternoon before the evening supper and before I go to bed at night and then two in the morning. And my landlady, she asked me, "Mr. Fremault, are you all right"? I said, "Sure I am all right. Look," I say, and I started to move.

Q. You started to move around?

A. I started to move around and I got no pain any more. Then in the noontime before I got my dinner I say, "I will take a couple more". In no time I got no pain any more in my arm or shoulder or anything, everything is all right and that is why I was so satisfied. I said, "I will write a letter to Mr. Gabriel Heater" and then I don't know if the letter came to him or not, but anyway I told him, "I take this medicine, it is wonderful".

Q. Is that what you said?

A. Yes, "It's wonderful. You are advertising your
859 medicine. It is wonderful. I have got no pain any more." Yes, it is gone; and I never had rheumatism or any thing; everything is all right.

Mr. Goding: That is all.

Cross-Examination by Mr. Callaway.

Q. How many Imdrin tablets did you take?

A. Twelve.

Q. That is all you have taken?

A. That is all I have taken. I have got sixty left. I have got the bottle left.

Q. When was this you bought the Imdrin and took it?

A. I bought it in October or November.

Q. Of last year?

A. Of last year.

Q. And you haven't been bothered with the pains any more?

A. No.

Q. How long were you bothered with the pains before you took the Imdrin?

A. That part I got about a year ago or two years.

Q. In the back?

A. In the back.

Mr. Goding: You started to say about the shoulder.

The Witness: The shoulder I got about—

Mr. Callaway: Wait just a minute.

860 Mr. Goding: He hasn't finished. Let him finish.

Mr. Callaway: I want to be able to conduct this examination, if I may, without interruptions.

Mr. Goding: Excuse me. If it please the Examiner, he asked another question when the witness continued telling about the shoulder. I think, especially in view of the—

The Witness: You are going to fast.

Trial Examiner Lipscomb: Let all of us speak slowly.

Mr. Goding: Let him finish his answer.

By Mr. Callaway:

Q. Now, then, did these pains first come on you while you were working?

A. No, because I didn't work at that time. I was too old.

Q. You had quit working when these pains started?

A. Oh, no, that was before. It was a long time I don't work no more.

Q. Do I understand that you were working? I don't mean at the particular time when the pain hit you but you were working during that period of time, were you?

A. Why, no. I stayed home. I was home all the time. I didn't do no work.

Q. How long has it been since you have done any work?

A. Oh, it must be July, two or three months before
861 I got the pills. It must be two or three months before that I was suffering.

Q. You were working steadily up until that time?

A. No. I was stay home. I was in the institution, in

Manteno, you understand, for a year. Then I didn't work any more.

Q. You didn't work any more after when?

A. Oh, many years ago. I was over there one year. That is about three or four years.

Q. You mean you haven't done any work in three or four years now?

A. No.

Q. How long ago was it when these pains first came on you?

A. Oh, it was—well, I guess it must have been June or July.

Q. Of last year?

A. Of last year.

Q. That is the first time you had them?

A. That pain, yes. That pain here I got a long time, on the sides. In my shoulder, that time I got it in June or July, something like that.

Q. Of last year?

A. Of last year, yes.

Q. I believe you said you used a number of different things?

A. Yes.

862 Q. Did you have any aspirin? Did you use any aspirin?

A. No, I didn't want to take aspirin. I never got confidence in aspirin, that is one thing. That is why I never used it very much.

Q. You never used any aspirin, then, for your pains?

A. No.

Q. You said you had the landlady rub you, I believe, with some camphor oil?

A. Yes.

Q. What else did you use?

A. That was all what I use.

Q. Just the camphor oil?

A. Just the camphor oil, yes.

Q. And you did not take anything else internally, I mean through your mouth, except the Imdrin?

A. No.

Q. How long were you laid up with these pains before you took the Imdrin?

A. Before I took the Imdrin? About two or three months.

Q. Two or three months?

A. Yes.
Q. Were you in bed?
A. No.
Q. Up and around?
A. Yes. I couldn't even lift something, it was hurt-
863 ing too much.
Q. Would they get worse and get better at times, or were they just continuous?
A. It hurt all the time.
Q. Just as bad as it could be all the time?
A. Yes.
Q. What were you attempting to do during the two or three months that you had this pain before you bought the Imdrin? Were you attempting to work at all?
A. When I was looking for a place, for a job?
Q. Yes.
A. I couldn't start to work. I am on old age, I can't start to work. If you start to work, if you look for anything, they look at your face and they say, "No, you are too old".
Q. Did you see a doctor?
A. No.
Q. Have you ever seen any doctor at all?
A. No. They are too cheap, the doctors.
Q. I understand you haven't seen any doctor at all?
A. No.
Q. Didn't you see a doctor just before you came down here this afternoon?
A. No—the one that brings me in here?
Q. Yes.
A. I took off my clothes and he looks at me.
864 Q. How long were you with that doctor? Did the doctor bring you down here?
A. Yes.
Q. In a car?
A. Yes.
Q. Somebody is going to take you back when you get through?
A. No.
Q. You are going back on your own hook?
A. Yes.
Q. Where was it that you saw this doctor?
A. At this office.
Q. Up in Mr. Gettleman's office?
A. Yes.

Mr. Goding: On La Salle Street?

The Witness: Yes. I don't know, 10 North or South. I thought it was North and I looked there, I was waiting there for about three-quarters of an hour and I finally went and I said, "Is it down here?" They asked me to come here at 1:45 and I am here at 1:45 and it is 2:30 o'clock. Then they told me it isn't here. No, 10 South, and then I came here. His address is 10 South La Salle. That is why I was three-quarters of an hour too late.

By Mr. Callaway:

Q. When the doctor talked with you up there before he brought you down here, when the doctor talked
865 with you up there at No. 10 South La Salle Street what did he ask you, what questions did he ask you?

A. The same thing like you asked me. How old I am, where I have my pain.

Q. You took off your clothes down to your waist, I presume?

A. Yes.

Q. And he examined you?

A. And he examined me.

Q. How long would you say you were with the doctor there before you came down here, when he examined you?

A. Oh, it took half an hour maybe.

Q. Were there any others waiting for an examination where you were?

A. No.

Q. You were the last one there?

A. I was the last one there.

Q. Was that up there at No. 10 South La Salle Street?

A. Yes.

Q. And, therefore, you are the last one who is here, it looks like, this afternoon. Now, did the doctor take your blood pressure?

A. No.

Q. Did he put something on his ears and listen to your chest or your heart?

A. He said everything is all right.

866 Q. He just moved your muscles around and felt of them?

A. Yes. I said, "I don't feel anything any more".

Q. Did he take your pulse?

A. Yes.

Q. Did you have any tender spots there when he felt of you?
A. Tender?
Q. Tender spots where it hurt when he felt of you?
A. No.
Q. You haven't got any place like that now?
A. No.
Q. That is the way it was before, wasn't it?
A. Yes. I showed him everything.
Q. Did you say you heard Gabriel Heater?
A. Yes.
Q. That is why you got the Imdrin, was what you heard Gabriel Heater say?
A. I hear, "Imdrin, Imdrin, Imdrin" and that is why I want to buy. I used that can of medicine and had the landlady massage me and it didn't help me. I thought I will try it. It cost three dollars.
Q. Before you got the Imdrin you had pain, you say, in your back, as I understand.
A. Yes and here, too.
Q. Did you have any swelling?
A. No.
867 Q. Just the pains?
A. Just the pains.
Q. Did it hurt all the time?
A. Sometimes it hurt more, I couldn't move.
Q. What were you seeking when you took the Imdrin, to get rid of the pain?
A. When I take it?
Q. You were seeking to get rid of pain, weren't you?
A. Yes.
Q. And you got rid of the pain, didn't you?
A. Yes.
Q. But that is what you were trying to get rid of when you took the Imdrin?
A. The first time I take me two pills in the morning.
Mr. Callaway: That is all.
Mr. Goding: Mr. Fremault, thank you very much.
Trial Examiner Lipscomb: The hearing is adjourned to reconvene in the morning at 10 o'clock.

(Whereupon, at 5:20 o'clock P. M., Tuesday, May 22, 1951, an adjournment was taken until 10 o'clock A. M., Wednesday, May 23, 1951.)

868 Room 802-A, New Post Office Building,
Van Buren and Canal Streets,
Chicago, Illinois.
May 23, 1951.

Met, pursuant to notice, at 10:00 a. m.

Before:

Abner E. Lipscomb, Trial Examiner.

Appearances:

Joseph Callaway, Counsel supporting the complaint.

Frank E. Gettelman, Attorney for Respondent, Jerome H. Rose, 10 South La Salle Street, Chicago, Illinois.

James B. Goding, Attorney for Respondent, J. Sanford Rose, 653 Washington Building, Washington, D. C.

869-870 Proceedings.

Trial Examiner Lipscomb: The hearing will come to order.

Mr. Goding: I will call Mr. Jacobs.

LOUIS JACOBS was thereupon called as a witness for the Respondent and, having been first duly sworn, testified as follows:

Direct Examination by Mr. Goding.

Q. Will you tell us your full name, please?
A. Louis Jacobs.
Q. What is your address?
A. 1928 East 93rd in the City of Cleveland, in the County of Cuyahoga.
Q. What is your profession, Mr. Jacobs?
A. I run a small hotel, just 30 rooms.
Q. In Cleveland?
A. Yes, sir.
Q. At that address?
A. Yes, sir.

Trial Examiner Lipscomb: Off the record.
(Discussion off the record.)
Trial Examiner Lipscomb: On the record.

By Mr. Goding:

871 Mr. Goding: Some few weeks ago I spoke to Mr. Callaway, counsel for the Commission, and as a result of that conversation, Mr. Callaway can correct me if I am in error, we have a stipulation to the effect that Dr. Ralph Wolpaw, a previous witness who appeared here in this proceeding in support of the Commission's complaint, was a physician who diagnosed and treated this present witness, Mr Jacobs, in Cleveland, Ohio, that his diagnosis of Mr. Jacobs' condition was gouty arthritis.

Mr. Callaway: Now there is a correction. That man has been a patient of Dr. Wolpaw. I believe, Mr. Goding, I told you that Dr. Wolpaw wrote me that this man was in the Cleveland Clinic in 1949, at which time he had a diagnosis of gouty arthritis. Now, Dr. Wolpaw didn't say that it was his diagnosis, you understand, but I am perfectly willing, I think the Cleveland Clinic is fully able to judge of the man's accurate diagnosis.

Mr. Goding: My understanding was, and I presume that you will stipulate, that there has been a physical diagnosis and a competent diagnosis that this man's condition was gouty arthritis.

Mr. Callaway: By the Cleveland Clinic in 1949.

Mr. Goding: And do I understand you will further testify that at sometime this witness was a patient of Dr. Ralph Wolpaw?

872 Mr. Callaway: Yes, sir.

Mr. Goding: All right. We will proceed from there.

Trial Examiner Lipscomb: You used the word "testify". You meant stipulate?

Mr. Goding: Yes. Thank you for the correction.

By Mr. Goding:

Q. Now, Mr. Jacobs, when did you first have this condition?

A. I can't give you no date.

Q. Approximately how many years ago?

A. I don't know, about two and a half, three years, two and a half, something like that, I don't know. What I know it is the first doctor I met who put me to bed.

Q. Who was that?
A. I was 58 years old, and they put me to bed.
Q. Who did?
A. Dr. Speck.
Q. Of Cleveland?
A. Yes.
Q. Do you remember his name?
A. Myron.
Q. Myron?
A. He was a major in the Army.
Q. By the way, let me interrupt at this point. Tell us your age?
A. I will be 61 December 11.
873 Q. Now what did Dr. Speck do for you, if anything?
A. Well—
Q. What did he tell you to do?
A. When I saw Dr. Speck, I was in good condition, but I had—my ankle bothered me, and this knee bothered me.
Q. When you say your ankle, you pointed to the ankle of your right foot and right knee.
A. Of my right foot.
Q. All right, sir.
A. And he came to my hotel and treated me, and I give him $10.00, and then he says, "Now tomorrow you better come to my office and I will give you a general checking". I have never been to a doctor. I had checkings of Waterman's and different things, you know, but never really checking. So I went to his office, and he had a place maybe twice the size of this, I don't know how many rooms, every room checked off and a bed in each room, and everybody was waiting for him to come or somebody to come and give you a shot. You know, I mean, there must have been—I don't know—
Q. What did he do for you?
A. He give me a shot and charged me $5.00.
Q. Did that help you?
A. I got worse. It didn't help.
Q. Did you see Dr. Speck after that?
A. I saw Dr. Speck for some time, and then I found
874 out everybody else paid $3.00, but I paid $5.00.
Q. How many more times did you see Dr. Speck?
A. I don't, I couldn't telling you, sir.
Q. Whom did you see next for your condition, what doctor or hospital or clinic?

A. I went to the Cleveland Clinic. I saw 20 doctors, not one but 20 doctors.

Q. Very briefly, what was done for you at the clinic, if anything?

A. Well, they took blood from here and blood from there.

Q. Pointing to your arms.

A. And I don't know what they took off of me. They give me the doctors run around for a few days, that was miserable, x-rays on here, x-rays from there, every part of my body, and they put me in a room, two hours looking at me.

Q. Do you remember seeing Dr. Wolpaw at that clinic?

A. Never, never.

Q. When was—or did you at some time see Dr. Wolpaw?

A. You mean during that period?

Q. At any time?

A. Oh, certainly, Dr. Wolpaw treated me.

Q. But before we come to Dr. Wolpaw, did you see any other doctor?

A. Sure.

Q. After the clinic?

875 A. Certainly.

Q. Who?

A. I saw one of the greatest specialists in the clinic, Dr. Rieck.

Q. Specialist in what?

A. In arthritis and bone diseases and joint sicknesses.

Q. What is his name?

A. Dr. Rieck.

Q. How do you spell it?

A. R-i-e-c-k.

Q. What, if anything, did he do for you?

A. Dr. Rieck I saw one day and he said, "You got the gout," he told me.

Mr. Callaway: Well, of course—

Mr. Goding: You have already conceded that that is his condition.

Mr. Callaway: That's all right, I guess.

By Mr. Goding:

Q. What did he do for you, if anything?

A. He don't do nothing for me but took $25.00 and send me the bill for $10.00, and I wouldn't pay it. And he told me he couldn't do anything for me and $25.00, and

sent me to another doctor and charged me $10.00, and send me a bill for $15.00.

Q. All right, Mr. Jacobs. Did you see any other doctor after that?

876 A. Yes, a Dr. Grossman, a very nice gentleman and got no money.

Q. Grossman?

A. Yes, sir. I can't do nothing for you, I can't do a thing for you, Mr. Jacobs, and I said how much do I owe and he said nothing.

Q. Did you see another doctor after Grossman?

A. Sure, I saw Dr. Wolpaw.

Q. About when was that?

A. Please, please.

Q. Roughly.

A. I don't know.

Q. Did you see him?

A. You are not going to pin me down to nothing, sir. I don't know.

Q. Did you see Dr. Wolpaw at his office or at your hotel?

A. At my home, let me explain how I said. I have a brother—that is a wise guy, five years younger than I am. He lives in Indianapolis, Meyer S. Jacobs. He has apartment store in Indianapolis, and he is going to do this and going to do that and he is going to do everything, and I told him I wanted to be left alone, I have done everything I could, so he send me to Dr. Wolpaw, a specialist and he told me arthritis, the clinic didn't tell me, he told me. I don't care what this gentleman says, and he got $15.00 for it.

877 Q. All right. He saw you at your home, you said?

A. Yes, at my apartment in the hotel.

Q. What was your condition at that time when you saw him?

A. I could walk outside on the porch, I could go through the hotel like I come up here, I took two Imdrins or I wouldn't have been up here.

Q. Let's go back a bit before we get into what happened with respect to Dr. Wolpaw. Had you taken at the direction of any doctor or any clinic or hospital, had you taken any medicine?

A. Pills and medicine, sure.

Q. Do you know what they were?

A. I took a little bitty pill, a little tiny one, and then they stopped me, you know, and I went to the clinic again and Dr. Cameron said, "I can't do nothing for you, Jacobs. What's the use of throwing your money away." Dr. Cameron worked for the clinic.

Q. Did you ever take aspirin?

A. Yes.

Q. How much aspirin?

A. One hundred pills in a bottle, I took them in a question of six days, and Dr. Wolpaw says never mind, go back and take Imdrin again.

Q. As I understand it, you took a bottle of 100 tablets over a period of six days?

878 A. But I took some other kinds besides that.

Q. Let's stay with the aspirin. Did they give you any relief?

A. No, certainly not. They made me sick.

Q. When did you start to take Imdrin?

A. Oh, two and a half years ago, I don't know. I don't know the dates or months. I don't know the year, whether it was '49.

Q. What were the results on your condition from taking Imdrin?

A. Would you like to know my results?

Q. Yes.

A. I was going to go to Hot Springs, you know, to take baths because my brother says you got to go, you got to do this and I have a houseman who was going to drive me, and I have a car, I can lay down in, sir, you know, in a pleasant trip, but I bought five jars of Imdrin before I started on the trip, I wasn't going to take a chance, I might miss them in the Ozarks, up in the mountains; I may not be able to get them, I could get aspirin, but not Imdrin, and God is my judge.

Q. Mr. Jacobs, will you tell us for the record what were the results on your condition from taking Imdrin?

A. Imdrin didn't cure me—wait a minute, what do you mean, the results?

879 Q. Did it help you in any way?

A. Certainly.

Q. How?

A. I had no pain and I could walk. I could go places. I came to Chicago, sir, and take the Imdrin away and I won't come to Chicago.

Q. Now at sometime you saw Dr. Wolpaw at your home?
A. Yes, a lot of times.
Q. All right. Now the first time you saw him, I presume you told him—
Mr. Callaway: Wait a minute. Don't lead him.
Q. What did you tell him with regard—let me finish.
A. I don't know.

By Mr. Goding:

Q. What did you tell him with regard to what you had been doing for your condition?
A. I told him what he treated me, sir.
Q. Did you tell him what you had been taking?
A. That I was taking Imdrin. He saw a jar.
Q. Did you have a talk with him about taking Imdrin?
A. Yes.
Q. What was that talk?
A. He said, "That is like aspirin, what do you pay $5 and a half, five sixty-seven with tax." He said they are just like aspirin, you can take aspirin at not so 880 much cost, and I just got off the case on the Government, I don't know specifically, I don't know what he meant, I just got off a case on Imdrin, it is nothing but aspirin.
Q. What did you say?
A. I said I had a bottle some place in the place, I had read—
Q. In the Reader's Digest?
A. I read some place—believe me I don't know what I read, where I read it in specifically, I can't tell you, but I read it and I told him, but you see it helped me.
Q. Is this what you told him?
A. I told him Imdrin helped me and that it is wonderful.
Q. Did you tell him what effect?
A. He knew that.
Q. Was that with regard to aspirin, he was talking about aspirin?
A. I hadn't taken aspirin before that. I took Imdrin.
Q. What did he advise you to do?
A. He told me to get a jar of aspirin and I said—
Mr. Callaway: Wait a minute, excuse me. I don't know that conversation as to what the doctor advised him to do would be permissible in this. It is hearsay evidence.
Mr. Goding: I think counsel forgets that Dr. Wolpaw was a witness in this proceeding and I think very clearly this

testimony is competent. The whole burden of Dr. Wolpaw's
881 testimony, as I understood it, was that the aspirin or salicylate therapy—strike that—was that Imdrin was not efficacious. Now certainly I think we are entitled to go into discussions between somebody who was a witness prior to this witness tending to show what this prior witness said and the results of the conversations he had with a patient who this gentleman happens to be.

Mr. Callaway: I didn't ask Dr. Wolpaw about conversations with this witness. If they had asked Dr. Wolpaw about conversations with this witness and then this witness were to come on the stand to testify as to different conversations as to what Dr. Wolpaw had testified about, then this testimony about what Dr. Wolpaw would be admissible, but you can't bring on somebody to talk about conversations that a prior witness had when the prior witness had not been confronted with those statements at the time.

Mr. Goding: May I say this?

Trial Examiner Lipscomb: Off the record.

(Discussion off the record.)

Trial Examiner Lipscomb: On the record.

Mr. Goding: I will withdraw that question.

By Mr. Goding:

Q. Now, did Dr. Wolpaw know that you were taking Imdrin?

A. Certainly.

Q. All right. What were Dr. Wolpaw's instructions to you with regard to any form of medicine?

882 Mr. Callaway: Objection.

Trial Examiner Lipscomb: I think it is the same thing in a different form.

Mr. Goding: I beg your pardon, if you please, Mr. Examiner—

Trial Examiner Lipscomb: Off the record.

(Discussion off the record.)

Trial Examiner Lipscomb: On the record.

Mr. Goding: I shall withdraw the pending question.

By Mr. Goding:

Q. After you saw Dr. Wolpaw that first time, what medicine if any did you take, what did you take for your condition?

A. Over again, sir.

Q. After you saw Dr. Wolpaw that first time, what did you take for your condition?

A. Aspirin.

Q. And will you tell us what relief, if any, that afforded you?

A. That made me sick, I was just as sick—I wasn't relieved because they took me off Imdrin and put me on aspirin. I was sick in bed.

Q. Did you sometime after that go to a hospital?

A. You mean to the clinic? That was the only place, no, sir.

Q. All right. I don't want to confuse you. Did
883 you see Dr. Wolpaw again?

A. Again and again and again.

Q. I see. Now at sometime did you have a further conversation with Dr. Wolpaw about Imdrin? You can answer that yes or no.

Mr. Callaway: Answer that yes or no?

A. Yes.

By Mr. Goding:

Q. Now will you tell us the nature of that conversation?

Mr. Callaway: Objection.

Trial Examiner Lipscomb: Isn't that the same problem?

Mr. Goding: Yes. I should like to be heard on that at this time.

Trial Examiner Lipscomb: Heard on the record?

Mr. Goding: Yes, if I may.

Trial Examiner Lipscomb: All right.

Mr. Goding: I feel quite strongly that this evidence that is about to be offered or that is now being offered is very germane, tending to show the attitude of one of the Government's chief witnesses in a rather unusual situation. This doctor had the full history of all the various types of medically orthodox therapy that had been utilized for this gentleman's benefit. That none of them were of any avail, that after the salicylate therapy was at-
884 tempted, that it was unsuccessful, that the doctor then told this witness something that I consider highly vital in this case. This doctor himself was a witness. The whole burden of his testimony was that Imdrin has little, if any, therapeutic value. We tend now to show by this

testimony, I think to a very large extent, facts which tend to discredit that position on the doctor's part.

I think we are entitled to show it. I am not asking for a detailed conversation. I am asking for what the doctor's ultimate attitude was after trying out the various types of therapy recognized by the profession.

Mr. Callaway: Well, it is the same proposition exactly as we have had before on which your Honor has ruled. To permit this witness to tell what Dr. Wolpaw told him without having given Dr. Wolpaw an opportunity to say what he told this witness is clearly inadmissible.

Trial Examiner Lipscomb: Objection sustained.

Mr. Goding: We will take an exception.

By Mr. Goding:

Q. Now as a result of that conversation that you had with Dr. Wolpaw, what did you do or what sort of medicine did you use?

Mr. Callaway: Objection. In other words, when he says as a result of that conversation what did you do, it is going out one door and coming in the other and doing
885 something because the doctor told him to do it.

Mr. Goding: That may be, but I think the manner of that question has been enunciated as acceptable so many times that I don't think I have to argue the point.

Trial Examiner Lipscomb: I think it is just as objectionable as the other. Objection is sustained.

Mr. Goding: Well, all right. We will take exception.

Q. After your discussion with Dr. Wolpaw, what did you do for your condition, what did you take for your condition?

A. I took aspirin.

Q. I am talking about after this second time, after you had been using Imdrin and you saw Dr. Wolpaw again?

A. Then he give me another pill. I don't know what they were, but he give me a prescription and my maid went down and got it. I didn't get a prescription for the first one, the aspirin, but for the other one, the maid got it, and I still got some in a little bottle because I was just as sick.

Q. Did you see Dr. Wolpaw again?

A. Yes.

Q. I see. At sometime did you go back to Imdrin after seeing Dr. Wolpaw?

A. Certainly.

Q. Now what were the results of your going back to Imdrin?

A. I didn't have the pain I had before.

Q. The pain was relieved, is that what you said?

886 A. By all means, I could go to the washroom, walk a little bit, get up, whereas I wasn't totally disabled.

Q. Now when did you last take Imdrin?

A. This morning I took Imdrin. I used—go to room 548 in the Congress Hotel, you will find a jar that I paid five sixty-seven for on the dressing table, and I took two of them this morning, and I should take two before I eat if I eat again, if I don't eat, I don't.

Q. Mr. Jacobs, sometimes in March of this year, do I understand that you called the office of the Rhodes Pharmacal Company, the people who make Imdrin, in Cleveland and you told them about the effects?

Mr. Callaway: Objection.

Trial Examiner Lipscomb: Just a minute. Certainly that is leading.

Mr. Callaway: It is certainly a leading question.

Trial Examiner Lipscomb: It is objected to on the basis of leading—overruled.

By Mr. Goding:

Q. Did you call them sometime to tell about the good effects of taking Imdrin?

A. Certainly.

Q. And as a result of that you are here today to tell your story?

887 A. Arrangements weren't made until just a few days ago. This was March when I told them, and I said to keep on fighting. I called the Ohio Public Service and Gas Company to tell them to keep on fighting, to keep private enterprise private and not let the politics get hold of it, the city. I have done that for them, too. I called them and told them.

Q. All right, Mr. Jacobs. I think that is all.

Cross-Examination by Mr. Callaway.

Q. Mr. Jacobs, when did you first start taking Imdrin?

A. I seen it a lot of ads on drug stores windows and full page, and I don't pay too much attention.

Q. Was it a year ago, two years ago?

A. Two years ago or more.

Q. Two years ago or more?
A. Yes.
Q. What was your condition when you first started taking it, were you in bed?
A. I was very sick, sir. It was just when I come back from Hot Springs when I started taking it. I was in Hot Springs taking baths and it didn't help me.
Q. You have been taking Imdrin right along down the line since then?
A. Never stopped until Dr. Wolpaw stopped me.
Q. And that was in March of this year when you first saw Dr. Wolpaw?
888 A. Beg your pardon?
Q. That was in March of this year when you first saw Dr. Wolpaw?
A. I don't know.
Q. It is at least since the first of the year?
A. That's right. It was this winter I saw Dr. Wolpaw, what month I don't know.
Q. From the time you first started taking Imdrin up until you saw Dr. Wolpaw, had you been in bed at any time with your ailment?
A. You mean while I was taking Imdrin?
Q. Yes. I mean during the period of time from the time you first started taking Imdrin, you said about two years ago?
A. Yes.
Q. Since that time, up until you saw Dr. Wolpaw, have you been in bed at any time with your trouble?
A. I am going to be very frank and honest about everything, sir, everything possible. I have been in bed for two and one-half years, but I get out of bed, I can go to the barbershop, and if I don't take the Imdrin, I don't go to the barbershop.
Q. But now you felt better at times and worse at times during that two and one-half years, have you not?
A. If I forget to take Imdrin and don't take them for a day, I feel worse.
Q. But in other words, didn't your trouble sort of
889 come and go, I mean weren't you worse some days than you were others?
A. You mean sicker in pain?
Q. In pain?
A. I stopped the pain, sir. God bless them, honest to God, it stopped the pains.

Q. You haven't had any pains in two and one-half years?

A. Yes, certainly, I have had pains, but I don't have the kind I had, I'd hit the ceiling, and if I move my leg a certain way, I get a pain.

Q. Have there been periods in the last two and one-half years, I'd say up until the time you first saw Dr. Wolpaw, when you did have pains that made you want to hit the ceiling?

A. The only time that I had extreme pains regardless, as God is my judge, is that I'd have following me if I'd miss the Imdrins, and I'd have relief after you take them; and if I didn't take them again and if I miss the Imdrins from morning until evening, I get pains that night and never missed it.

Q. Mr. Jacobs, I always thought that gout, which I understand you have had, was a disease that you would have come and go, that you'd have periods of intense pain and then there would be periods when your pain wasn't so much, and then there would be another period of intense pain and there'd be periods when it wasn't so much?

890 A. But you stop it and believe me—can I say something?

Q. Go ahead.

A. I had 26 teeth pulled, you know, pulled by Dr. Fishbein, he pulled 8 one day and the next 8 and 8 and so forth. Wait, I says, I don't want the tooth pulled by the installment plan. I don't want to take my aches every day. I want one ache every day, you know what I mean?

Q. Yes.

A. And Dr. Fishbein said he'd pull 8 and come back, and I said I am not coming back. I am going to another dentist to have my other teeth pulled. I am shaking, my heart is shaking. How can you take it? I says I found out how I could take it because before I saw Dr. Fishbein I took two Imdrins, and I know that I could take any kind of pain, honest to God, and if you don't believe, you take a couple of Imdrins and have a tooth pulled, and you won't have an ache.

Q. You could have an operation with Imdrin?

Mr. Goding: Just a moment. That question is very unfair; it is argumentative and unfair and doesn't belong here. I move it be stricken. It is not a proper question.

Trial Examiner Lipscomb: I think it was invited by the type of testimony, not of the witness, but it will be stricken.

By Mr. Callaway:

Q. Now let's see, Mr. Jacobs, I believe you said
891 that the first doctor you went to see was Dr. Speck?

A. Yes, sir.

Q. At the time or before you went to see Dr. Speck, you had pain in your right knee I believe and ankle you said?

A. Yes, sir.

Q. And did you also have swelling in those places?

A. No, sir.

Q. You didn't have any swelling?

A. No, sir, no swelling, but pain and the pain was terrific.

Q. Have you had any swelling in your right knee and ankle since then?

A. I had a little swelling in my ankle, a little, none in my knee; my knee is cured completely, my right knee, sir.

Q. Now when you went to see Dr. Wolpaw, didn't he take some fluid out of your right knee?

A. Not right away, sir.

Q. But he did?

A. He come three or four times and collected the money off of me by looking at me, and the next time he put a big needle about this long in me and stuck it in there and says, "Does it hurt?" And I said, "No." And he says, "It hurts." And I says, "No, because it doesn't hurt."

Q. But he did take some fluid out of your knee?

A. Yes, sir. He had a cup and took out a lot of it
892 in a big bowl.

Q. Your knee was swollen at that time?

A. Yes, sir.

Q. Was that the first time your knee had been swollen?

A. That ain't the same knee. You are talking about a different knee.

Q. Either one?

A. The left knee you are talking about.

Q. I see.

A. The right knee got cured, the Lord cured it.

Q. You had trouble with your left knee?

A. Yes, sir. I still have.

Q. Did you have trouble with your left knee when you first saw Dr. Wolpaw?

A. Yes, sir.

Q. Did you have pain in the left knee when you first saw Dr. Wolpaw?

A. When I first saw—I didn't bring Dr. Wolpaw to myself, you know who do? This wise guy brother who told Dr. Wolpaw, don't him no bill, mail to me the bill. Wait a minute, Dr. Wolpaw, I don't trust you, I says, what is the bill, and I paid him immediately in cash, and I told him I was afraid of over-charge. They told me $15.00 by Dr. Rieck; I don't pay it, I paid it to my attorney and I wanted to know why I was being hazard by letters. I didn't hire Dr. Wolpaw.

Q. I understand. You have had pain and swelling
893 in your right knee at one period of time?

A. Two years ago, sir.

Q. Two years ago?

A. Maybe more than two years ago.

Q. The swelling in your right knee went away?

A. Yes, sir.

Q. Now, then, later you had pain and swelling in your left knee?

A. Wait. You get me wrong. I take that back. I don't know how much swelling there was in the right knee. It was—truthfully I don't know how much swelling; it was painful. I wouldn't go on record, sir, I don't even remember swelling. It hurt terribly and my ankle was swollen, that was swollen, but I don't know about the knee.

Q. You did have swelling in the ankle?

A. Yes, sir, but I don't remember having swelling in the knee.

Q. I see.

A. I do know I had pains in the knee.

Q. Was your right ankle stiff?

A. Well, you couldn't walk on it. I don't know how stiff it was, you couldn't stand on it, couldn't stand up. You just couldn't stand up.

Q. You had some stiffness, then, did you not?

A. I don't know what stiffness means.

894 Q. It means unable to move it about, being able to move it as I am moving mine.

A. I don't know if I could move it, I know I couldn't stand on it, sir.

Q. Did you have that condition when you first talked to Dr. Speck?

A. In my right knee, sir, yes, sir, and ankle.

Q. And your ankle was swollen?

A. Yes, sir.

Q. Now those conditions were what you went to see Dr. Speck about, were they not?

A. Correct, sir.

Q. And those were the conditions from which you wanted relief when you went to see Dr. Speck, weren't they?

A. Yes, sir. I didn't go to see him; he came to see me. I wasn't able to go to see him, yes, sir.

Q. And if you had gotten relief from Dr. Speck from those conditions, you would have felt like you had been cured, wouldn't you?

Mr. Goding: Objection. That is a conjecture.

Trial Examiner Lipscomb: I think it is objectionable.

Mr. Callaway: Sir?

Trial Examiner Lipscomb: I think it is calling for a conclusion which the witness is incompetent to make.

Mr. Callaway: It would be his own conclusion.

895 Mr. Goding: It is still objectionable as being conjectural. We could spend a lot of time here conjecturing.

A. Can I say something, sir? Will they call me again for a trial like this?

Trial Examiner Lipscomb: Just a minute.

A. I promise faithfully I won't appear again at no place, no time, nowhere. That is my candid opinion, it ain't going to happen again. Can you help me out, sir?

Mr. Goding: I have already assured you, Mr. Jacobs that we will have bothered you only one time and that is today and no other time.

A. You are not going to subpoena me.

Mr. Callaway: Am I bothering you with my questions?

A. I am here, but I don't know why I am here.

By Mr. Callaway:

Q. Why did you come?

A. Well, I was under the impression that the way things looked like they are going to put Imdrin out of business or something.

Q. Who told you that?

A. Dr. Wolpaw said that aspirin—

Mr. Goding: Let him answer the question. I think that is highly unfair. Let him answer the question.

Trial Examiner Lipscomb: Just a minute.

Mr. Goding: No. There is a question pending, I think it is highly unfair.

896 Trial Examiner Lipscomb: Read the question to me please.

(Question read.)

Mr. Callaway: Anything beyond that is not responsive to the question.

Mr. Goding: I think he is entitled to expand and explain what was said. I think when the answer comes out it will not appear that Dr. Wolpaw said that specifically.

Trial Examiner Lipscomb: Answer the question.

A. Dr. Wolpaw said—

Mr. Callaway: Just a minute. The question is who told you they were going to put Imdrin out of business?

A. Let me get through.

Q. I want you to tell me, if you know?

A. I can't tell you, sir, I don't know.

Mr. Goding: I think the Examiner has made a ruling to give the witness an opportunity to answer the question.

Trial Examiner Lipscomb: Go ahead and answer.

Mr. Callaway: If that is the ruling, I withdraw the question.

Mr. Goding: There is a question here.

Trial Examiner Lipscomb: He has a right to withdraw the question if he wishes.

Mr. Goding: I will ask the question then.

By Mr. Callaway:

897 Q. Did Dr. Wolpaw put the needle in your knee and take fluid out of there more than one time?

A. Yes, sir.

Q. How many times did he do that?

A. Two times.

Q. Two times?

A. Yes, sir.

Q. Now did the knee swell up while you were taking Imdrin?

A. That knee was swelled up before I took Imdrin.

Mr. Goding: This is still the left knee?

Mr. Callaway: I am talking about the knee that Dr. Wolpaw took fluid out of?

A. That was before I took Imdrin it swelled up. When I took Imdrin it was still swelled up.

Q. And you mean it stayed swollen for two and one-half years?

A. Maybe a little longer since it started.

Q. Both knees weren't swollen?

A. No, sir. This knee got well.

Mr. Goding: The right knee?

A. This got well, the right knee. Do you want me to show you this knee got sick.

Mr. Goding: The left one, and it has been sick ever since.

By Mr. Callaway:

898 Q. Did it get swollen after your right knee went down?

A. Yes, sir. My right knee wasn't up; I think it wasn't even swollen, it was just aching, sir, an ache; but my ankle was swollen, sir, but that went down, sir, and it came up here.

Q. It same in the other knee?

A. A long time ago.

Q. Did that left knee continue to be swollen up until the time you saw Dr. Wolpaw and took the fluid out of it?

A. And it is still swollen.

Q. Did it go down any after he took out the fluid?

A. No, no, it is still swollen. Can I tell you what Dr. Wolpaw told me when he put the needle in?

Q. No, let's not; answer the question.

A. Thank you, sir.

Q. He did take fluid out of your left knee?

A. Yes, sir.

Q. Did he have a saucer there that he put the fluid in, or a bowl?

A. He had a big needle and on the needle was a cup, and this cup would fill up, and he took the cup off and put it in a bowl, and he done it maybe ten times. I can't swear.

Q. I understand, but a number of times?

A. A lot of times.

Q. You must have had a bowl full?

899 A. Let me tell you, Dr. Wolpaw said you can take a whole lot and it won't make no difference on the swelling of the knee when he took it out.

Q. Let's see, he did take out any number?

A. Of cups, and didn't bring the swelling down.

Q. It didn't go down at all?
A. No, sir, he said, you see—
Q. Just a minute, please, sir. We had a discussion about what Dr. Wolpaw said, let's not go into that.
A. Okay, sir.
Q. Now there was one time that he took fluid out of your knee and he took several cups full as he said, and another time later he did take some more fluid from your knee?
Mr. Goding: I think this is probably the fourth or fifth time he has gone—
Trial Examiner Lipscomb: It seems to me it is repetitious.
Mr. Callaway: All right.
Q. Did you go to Hot Springs recently, have you been to Hot Springs recently?
A. I was supposed to go to Hot Springs, and I have had a housemaid and my housemaid got impudent. He talked back to me, and I am the type of man they don't have to talk back to because I don't demand too much, and I told him I am surprised at you, he was living with me, and
900 you are through and I want you to move out, and the thing came up and I left him go, but I have five jars of Imdrin in my grip packed to leave.
Q. You were going?
A. He was supposed to drive me.
Q. You were going to Hot Springs?
A. Yes, sir.
Q. What were you going there for?
A. This wise guy, M. S. Jacobs, wise guy, he knows everything. He told me I got to go there. He'd send an ambulance after me if I don't go, and he is five years younger, and didn't want to aggravate him, I was going to abide by his wishes, I was to Hot Springs before, and it didn't help me.
Q. How many times have you been to Hot Springs, you mean Hot Springs, Arkansas?
A. I was to Hot Springs ten times before. I was never sick and I used to go to Hot Springs.
Q. And you haven't been to Hot Springs since you had these attacks?
A. Yes, I have, sir.
Q. How many times have you been there since?
A. Once I spent 21 days, baths I took; when I came

back somebody suggested going to Mount Clemens, so I went to Mount Clemens.

Q. How long after you first got these attacks was it that you went to Hot Springs?

901 A. I couldn't answer that question, sir. I really couldn't.

Q. Was it six months afterwards or a year afterwards?

A. I still can't answer it.

Q. Was it immediately afterwards?

A. Oh, no. I have had it for some time.

Q. You had had it for some time?

A. Yes.

Q. And when did you go to Mount Clemens?

A. Right after I came back from Hot Springs.

Q. Do you remember when you went to Mount Clemens?

A. Time don't seem to make any different to me, sir, honest. I don't even know what time it is during the day. I don't know what it is, ten o'clock, eleven o'clock, I haven't paid any attention to time in years at any time.

Q. How soon after you got the first attack was it you said you got the first attack, about two and a half years ago, I believe, and I believe you told me you had been taking Imdrin over two years?

A. Close to it, maybe longer, I don't know.

Q. Since you have been taking—

Mr. Goding: Just answer his questions.

Trial Examiner Lipscomb: Just answer the question and don't volunteer.

Mr. Callaway: Since you have been taking Imdrin, has your left knee swelled up?

902 Mr. Goding: We have gone into that.

A. It swelled up before that.

Mr. Callaway: That is all.

Mr. Goding: That is all. Thank you Mr. Jacobs.

Trial Examiner Lipscomb: You are excused.

(Witness excused.)

Trial Examiner Lipscomb: Off the record.

(Discussion off the record.)

Trial Examiner Lipscomb: On the record.

E. H. CARR was thereupon called as a witness for the Respondent, and having been first duly sworn, testified as follows:

Direct Examination by Mr. Goding.

Q. Will you tell us your full name, please?
A. E. H. Carr.
Q. Your address?
A. 795 Fairfield Avenue, Elmhurst.
Q. Is that Chicago?
A. Elmhurst.
Q. Now what is your occupation, Mr. Carr?
A. Operating turret lathe.
Q. And at sometime in the past you commenced to have some sort of pain?
903 A. Yes.
Q. What part of your body?
A. My shoulder.
Q. Right shoulder?
A. Here was the worst, and I had this joint here.
Q. You are pointing to the area of the thumb of your left hand?
A. Thumb on the left hand and right shoulder was worse, that was bad.
Q. About when was that that you first started to have it?
A. Oh, the first part of the last year, it got worse during about April and May.
Q. That is of 1950?
A. Yes, sir.
Q. And did you see a doctor?
A. No, I did not.
Q. Have you seen a doctor for treatment of that?
A. No, I haven't.
Q. Did you take any form of drug for that condition?
A. Yah. I took, well, all home remedies, lots of liniment and infra red, a big infra red lamp.
Q. First did you take aspirin?
A. Yes.
Q. Did it help you?
A. Didn't seem to, no.
904 Q. Did you take Imdrin?
A. I took Imdrin, yes.

Q. When did you first start to take Imdrin?
A. I started to take Imdrin about the first of August.
Q. Of 1950?
A. 1950, yes, sir.
Q. And did that help you?
A. Very much so.
Q. In what regard, how did it help you?
A. Well, it just relieved me of that excruciating pain. I couldn't raise my arm from the side. My wife had to help me with my coat.
Q. Was that before you took Imdrin?
A. Before.
Q. After you took Imdrin?
A. Well, it constantly got better and better until I don't have any effect at all.
Q. What effect did it have in the area of your left thumb on your left hand?
A. It disappeared entirely.
Q. You have complete motion of that left thumb now?
A. Oh, yes.
Q. How about your right arm and shoulder?
A. Okay.
Q. And your shoulder, you are moving your arm around?
905 A. Yes.
Q. So that the record will show that?
A. I am not restricted at all.
Q. Your right arm and shoulder is being moved around fully?
A. Yes.
Mr. Goding: I think that is all. Oh, one further question.
Q. Now this morning, Mr. Carr, were you examined by Dr. Weisberg?
A. Yes, sir.
Mr. Goding: I should like to make a statement similar to that I made yesterday with regard to those witnesses that testified, that the evidence adduced by Mr. Carr will be linked up by subsequent testimony by Dr. Weisberg.
I think that is all.

Cross-Examination by Mr. Callaway.

Q. Mr. Carr, how did you learn about Imdrin?

A. I heard it over the radio and I also saw the advertisements. I happened to be listening to a radio program—I am trying to think of his name now, the announcer.

Q. Gabriel Heatter?

A. Gabriel Heatter, yes, sir. And I thought the description that he gave of it or that I read in the paper seemed to fit my case precisely, and I asked the wife
906 to bring it home.

Q. You had pain, I believe, in your shoulder as you told us and in your right shoulder and left thumb?

A. That's right.

Q. Were either one of them swollen up any?

A. No. They didn't appear—the left thumb appeared to be swelled in this joint a little.

Q. The left thumb was swollen?

A. But the shoulder didn't appear to swell any.

Q. Was there any stiffness in the left thumb?

A. Yes, there was a stiffness there, and very sore.

Q. What were you seeking then when you bought Imdrin, was it relief from the pain, swelling, and stiffness; is that right?

A. That's right. I was on—

Mr. Goding: You better wait for a question.

By Mr. Callaway:

Q. And you got relief from pain, swelling, and stiffness?

A. What?

Q. And you got relief?

A. Oh, yes, very much so.

Q. Did you feel like you are well now?

A. I do. I haven't taken it for a month.

Mr. Callaway: That is all.

Mr. Goding: That is all. Thank you.

907 Trial Examiner Lipscomb: You are excused.

(Witness excused.)

OLIVE MAE CARR was thereupon called as a witness for the Respondent and, having been first duly sworn, testified as follows:

Direct Examination by Mr. Goding.

Q. Will you tell us your full name, please?
A. Olive Mae Carr.
Q. And are you the wife of the previous witness?
A. Yes, sir.
Q. And you live with him at 795 Fairfield Avenue, Elmhurst, Illinois?
A. Yes, sir.
Q. And your occupation is that of housewife?
A. Yes, sir.
Q. Do you have any other employment or occupation?
A. Yes.
Q. What is that?
A. I am an order taker.
Q. Order taker?
A. Yes.
Q. Now for the record let me say this: The witness' testimony will be linked up by subsequent testimony
908 of Dr. Weisberg, as I have said with a number of preceding witnesses.
Q. By whom are you employed?
A. The Galler Wholesale Drug House.
Q. Galler Wholesale Drug House?
A. Right.
Q. Is that in Chicago?
A. 651 South Wells.
Q. Now at sometime did you commence to have some pain in some part of your body?
A. Yes.
Q. Where was that?
A. From the ear all the way down on this arm.
Q. You are pointing to the left side of your body from the ear over the shoulder and through the whole arm?
A. Yes, sir.
Q. On the left side?
A. Right.
Q. When did that start, when did it commence, about when?
A. That is about two years ago.

Q. Did you see a physician?
A. No.
Q. Did you take something yourself for that condition?
A. Oh, I have used lots of things.
Q. I see. Did you take aspirin?
A. I have.
909 Q. And with what results?
A. Nothing.
Q. Did you take Imdrin?
A. I did.
Q. When did you first start to take Imdrin?
A. About a month after my husband started it.
Q. About when would that be?
A. I'd say about September.
Q. Of 1950?
A. 1950, right.
Q. And what were the results?
A. Just wonderful.
Q. Did you have, before you took Imdrin, did you have full mobility, could you move your arm around and your shoulder?
A. Yes.
Q. You could?
A. But it hurt.
Q. It hurt?
A. It did.
Q. After you took Imdrin the pain was eliminated?
A. It was wonderful.
Q. Did that happen immediately or over a period of time?
A. Well, the first week it started to lessen and lessen, and now I don't have it at all.
Q. How long did it take from the time you first
910 took Imdrin until your pain was completely eliminated?
A. Oh, I'd say about a month.
Q. About a month?
A. Right.
Q. Now did you see Dr. Weisberg today?
A. I did.
Q. And he examined you and talked with you?
A. Yes, sir.
Mr. Goding: That is all.

Cross-Examination by Mr. Callaway.

Q. Now, this is Mrs. Carr, I understand?
A. Yes, sir.
Q. You say that when did you say your pain started, these pains started, how long ago?
A. Oh, about two years ago.
Q. About two years ago?
A. Yes.
Q. Were they pretty severe pain?
A. Yes.
Q. Were you off from work with them?
A. Well, at first I thought it was my teeth and, see, I had my teeth removed, but then the pain was still there.
Q. But were you off from work with the pain?
A. Oh, yes, I was off.
911 Q. How long a time?
A. I was off a month.
Q. You were off a month?
A. Uh, huh.
Q. When was that?
A. That was, see, we come back from our vacation in August, I was the off the entire month of August.
Q. What year?
A. Oh, last year, 1950, last August.
Q. Last August?
A. Yes.
Q. Now then the pains you had been having, if they started about two years ago, you had been having pains?
A. Off and on.
Q. For several months before that time?
A. Oh, yes.
Q. Was that the first time you lost any time from work on account of it?
A. Yes.
Q. And you lost about a month then?
A. About a month, yes.
Q. Was that during your vacation time?
A. Yah. Well, see, I had a two-week vacation and then I come back and I only worked about three hours, then I thought it was my teeth, so I went over and
912 had them all yanked out, and I come back and the same thing was there again, so it couldn't have been the teeth.

Q. Now how long after you had the teeth yanked out was it that you started taking Imdrin?
A. Well, I took it in September.
Q. And you had your teeth yanked out in August?
A. In August, yes.
Q. And then you say about a month after you started taking Imdrin?
A. Yes.
Q. Your pains were gone?
A. Well, they were lessened, and it wasn't as bad as it was before.
Q. Now I understood you, I thought a while ago, you said they got better some during the first week and within a month after you started taking Imdrin the pains were practically all gone?
A. They were practically all gone, yes.
Q. And, say, by the middle of October your pains were practically all gone, is that about right?
A. October, first of November, right.
Q. Did Dr. Weisberg talk to you this morning?
A. He talked to me. He examined me.
Q. Where were you when he talked to you?
A. In his office.
913 Q. Where was that?
A. That is at 10 South LaSalle.
Q. Now what—how long were you with Dr. Weisberg this morning?
A. Oh, I'd say about half an hour.
Q. Did he examine you?
A. Oh, yes. I took my blouse off and he examined me.
Q. And you don't have any pain there now at all?
A. No.
Q. You didn't have any pain there at the time Dr. Weisberg examined you?
A. No.
Q. There is no swelling there or nothing like that?
A. No.
Q. How long has it been since you had any pain there, say, the first of November last year?
A. Around that time. But I still take it.
Q. Now, Dr. Weisberg, did he use a stethoscope, did he listen to your chest?
A. No.
Q. Did he take your blood pressure or anything?

A. All he did was just feel through my arm here, look at my teeth.

Mr. Callaway: I believe that is all.

Mr. Goding: Thank you very much.

914 Trial Examiner Lipscomb: You are excused.

(Witness excused.)

MRS. KATHERINE GOTT was thereupon called as a witness for the Respondent and, having been first duly sworn, testified as follows:

Direct Examination by Mr. Goding.

Q. Will you tell us your full name, please?

A. Mrs. Katherine Gott.

Q. Where do you live, Mrs. Gott?

A. 4317 South Wallace Street.

Q. Chicago?

A. Chicago.

Q. Now, I make the same statement with regard to this witness that I have with the other preceding witnesses in this session of the hearing, and that is that Dr. Weisberg will subsequently testify so as to link up an examination that he conducted with the testimony she will now adduce.

Mrs. Gott, you are a housewife?

A. Yes, sir.

Q. Do you have any other occupation?

A. I do housework occasionally for other people.

Q. At sometime in the past you commenced to have pain in some part of your body?

915 A. Yes, sir.

Q. Where, what part?

A. From my elbow down to my fingertips.

Q. You are pointing to your right arm, your elbow on your right arm?

A. It is in the righthand, slightly in the left; once in a while it bothers in the left.

Q. When you say the left, you mean the lefthand or all the way?

A. Just the fingers.

Q. Just the fingers of the left hand. Now when did the pain in those parts of your body start or commence?

A. About three years ago.
Q. About three years ago. Did you see a doctor?
A. No, I didn't.
Q. Did you take something yourself for that condition?
A. I took aspirin, anacin, and stuff like that, but they never did any good.
Q. They didn't do any good?
A. No.
Q. Did you take something—
A. I even rubbed liniment on it.
Q. Did you at sometime take Imdrin?
A. I am taking that now.
Q. When did you start to take Imdrin?
916 A. The last part of March.
Q. March of this year?
A. This year.
Q. What did it do for your condition?
A. It has helped me wonderfully.
Q. It has?
A. Certainly. Before I started taking it my hands were swollen up and I couldn't even bend my fingers down like that. They'd be swollen so badly I couldn't make a fist out of my hand.
Q. That was before you started taking it?
A. Yes, before I started. Now I can bend my hands and fingers.
Q. You can make a fist now?
A. Yes.
Q. I see. Now do I understand that since March you have been taking Imdrin?
A. Yes, sir.
Q. When did you notice that it first had the effects that you described?
A. Oh, when I had been taking it about half a month.
Q. About half a month?
A. I could notice the difference.
Q. You have talked about the swelling and your ability to make a fist with your righthand, how did it affect the pain?
A. Well, the pain has lessened a lot.
917 Q. It has lessened a lot?
A. Yes.
Q. Has it disappeared completely?

A. No, not completely.
Q. I think I asked you if you had ever seen a doctor and you said no?
A. No, I haven't.
Q. Now sometime today did you see Dr. Weisberg?
A. I seen him.
Q. At 10 South LaSalle Street?
A. Yes.
Q. At Mr. Gettleman's office?
A. Yes.
Mr. Goding: That is all.

Cross-Examination by Mr. Callaway.

Q. I believe I understood you to say that the pain and swelling started about three years ago?
A. Yes, sir.
Q. Well, would it come and go sort of or did it just stay, would there be more swelling at times than at others?
A. The colder months would be worse than in the warmer months.
Q. Did you ever notice any difference from day to day in how you felt?
A. If I have my hands in water a lot, it would be worse.
918 Q. And would the pains vary too?
A. Oh, yes, at times. It hurt more at night than they would during the daytime.
Q. And I guess they hurt more some nights than they did other nights?
A. Yes, sir. I used to have to get up at night and rub my hands and everything, but now I don't.
Q. You said you were a housewife, I believe, and what else did you do?
A. Housework occasionally.
Q. I see. Now the pains you had pretty severely?
A. At times it did.
Q. But you never did go to see a doctor about it?
A. No.
Q. They never were severe enough?
A. Well, it hurt, but I just didn't go see a doctor.
Q. Did you go to a clinic or hospital about it?
A. No.

Q. Are your hands still some swollen, Mrs. Gott?
A. They are not swollen much today.
Q. Were they yesterday?
A. No. It has been quite some time since they were swollen.
Q. Ma'am?
A. It has been a couple of months now.
Q. But all the swelling is not gone completely?
919 A. No.
Q. How did you learn about Imdrin, how come you started to take it?
A. My sister bought me my first bottle. She had heard about it, so she bought it and told me to try it.
Q. You never were, I take it, in bed during the daytime on account of the painful condition?
A. No. I wouldn't have a chance to go to bed, I have seven children.
Q. Ma'am?
A. I have seven children.
Q. And you continued to do your housework, I take it?
A. Yes.
Q. Now you talked to Dr. Weisberg I believe today?
A. Yes.
Q. In his office?
A. Yes.
Q. At number ten South LaSalle Street?
A. Yes.
Q. Now what did he do when you talked to him?
A. Well, he felt of my arms.
Mr. Goding: What?
A. He felt to see if I could raise them up and see if there is anything in my legs. There isn't any in my legs.

By Mr. Callaway:

920 Q. Did you disrobe for him to make a physical examination?
A. Sir?
Q. Did he ask you to disrobe?
A. No, sir.
Q. What examination he made was still with your clothes on?
A. Yes.
Q. Did he take your blood pressure?
A. No, sir.

Q. Did he take a stethoscope and listen to your heart or your lungs?
A. No.
Q. Did he take your temperature?
A. No, sir.
Q. Did he feel of your pulse?
A. Well, he didn't say he was taking my pulse.
Q. Well, he didn't have his watch out when he was feeling of you?
A. No.
Q. How long were you with Dr. Weisberg this morning?
A. I don't know, I didn't time it.
Q. Well, was it two minutes, five minutes, 10 minutes, 15 minutes or 30 minutes?
A. I don't know. About five or ten minutes I imagine.
Q. Uh-huh. A very short time.
Mr. Goding: She has already said five or ten min-
921 utes. Characterizing it I don't think is necessary.
Mr. Callaway: I think that is all.
Mr. Goding: Thank you very much.
Trial Examiner Lipscomb: You are excused.

(Witness excused.)

Trial Examiner Lipscomb: The hearing is adjourned to reconvene at two o'clock.

(Whereupon, at 11:55 a. m., a recess was taken until 2:00 p. m., this day.)

922 **Afternoon Session.**

2:00 p. m.

Trial Examiner Lipscomb: The hearing will come to order.

BERNARD W. VINISSKY was thereupon called as a witness for the Respondent and, having been first duly sworn, testified as follows:

Direct Examination by Mr. Goding.

Q. Will you kindly state your full name?
A. My name is Bernard W. Vinissky.
Q. Where do you reside?
A. 426 Briar Place, Chicago, Illinois.
Q. What is your occupation?
A. I am an attorney.
Q. Where is your office?
A. Ten South La Salle Street, Chicago.
Trial Examiner Lipscomb: Off the record.
(Discussion off the record.)
Trial Examiner Lipscomb: On the record.
Mr. Goding: Counsel for the Commission and I have stipulated—and you can correct me if I am in error—that the present witness, Mr. Vinissky, has been a patient of Dr. Edward F. Rosenberg of Chicago, who was a
923 witness in these proceedings in behalf of the Commission's complaint. That this witness was the patient of Dr. Rosenberg on and off since 1943, and prior to that sometime in 1941 Dr. Rosenberg met this present witness when Mr. Vinissky was at the Mayo Clinic for treatment there.

We have stipulated that this gentleman's condition, Mr. Vinissky's condition, is gouty arthritis.

Mr. Callaway: Now he was last seen by Dr. Rosenberg, as I understood it, in 1949?

Mr. Goding: This will come out in testimony.

Mr. Callaway: That was his condition at that time, but I can't stipulate—

Mr. Goding: With that qualification, I think that will complete our stipulation.

By Mr. Goding:

Q. When did you first have physical disability which ultimately led to your going to the Mayo Clinic?

A. Sometime in January, 1921 I had my first attack.

Q. January, 1921?

A. Yes.

Q. Will you describe what the condition was then?

A. At that time I had what I have been told is a true gout inflammation and soreness, tenderness of my joint of my large toe of my right foot.

Q. And did you procure medical help at that time?

924 A. At that time I conferred with several doctors, yes.

Q. Here in Chicago?

A. In Chicago, yes.

Q. It is sometime back now, but do you remember what the therapy prescribed was?

A. At that time the attack was not of too long a duration and as I recall it, it was principally heat and one doctor developed a new therapy that if he strapped the thing up it would keep the swelling back, but it never seemed to work out that way.

Q. Now subsequent to that did your condition change?

A. Yes. I had that type of condition for about a year to a year and a half. It would come and go, three or four days, and then nothing. It was difficult for me to get around but I did by the use of a cane, I could get around. I had shoes with the parts cut away, and things of that sort to relieve the pressure, and then I had, oh, roughly, a year of comparative freedom, and then I got what I was told was inflammatory rheumatism.

Mr. Callaway: Just a moment. I object to his characterization of what his condition was.

Mr. Goding: All right.

Mr. Callaway: I ask that that be stricken.

Trial Examiner Lipscomb: It will be stricken.

By Mr. Goding:

925 Q. Did your condition worsen?

A. It was definitely worse.

Q. Did you seek further medical help?

A. I did seek further medical help.

Q. What was done for you?

A. Well, I went to several doctors. This condition

persisted for about three years. It affected my feet, my ankles, my knees, and my hips. It seemed to work around the body.

Q. You say for a period of three years?

A. About three years.

Q. Commencing when?

A. In the early part of '23 or the latter part of '22.

Q. All right.

A. And the principal therapy that was given to me was by injections of a substance called milk; what it was I never did know.

Q. Did it help?

A. No. It didn't help me a bit.

Q. Was there any other form of therapy during that period?

A. Well, following that, then it was suggested that I go to the various springs and take these hot mineral baths and massages, but it was soon discovered that that was more harmful to me, it brought on attacks rather than helped hold them back.

Q. Following that three-year period—incidentally, 926 at the end of that three-year period, was your condition improved at all?

A. No. It remained, then it was pretty consistent. I might have a few days or a week where the pain wasn't so intense, that it would limit my activity, but I was home away from the office a third to half of the time.

Q. That was from about 1923 or '22?

A. Probably up until '29.

Q. Now in 1929, what was your condition?

A. Well, I had, I got an attack on Christmas Day on '29.

Q. Where, what part of your body?

A. Well, I can say from my shoulders all the way down to my toes. I don't recall any part of my body.

Q. On both sides?

A. Both sides. I was just sick.

Q. Did you see a physician at that time?

A. At that time I saw a physician in Chicago, and he began giving me intravenous injections of—

Mr. Callaway: He gave you intravenous injections?

A. Yes.

By Mr. Goding:

Q. Do you know what it was?

A. Oh, yes, I knew what they were because I had to go out of town on business and he would give me something to take with me.

927 Q. What was it?

A. Ten cubic centimeters of sodium salicylate with very small dosages of calcium and iodine. I believe it was put out by Parke Davis & Company at that time.

Q. Did they afford any relief?

A. Yes. For the first time I would get some relief. It would sort of put me back on my feet, but it would take, I was able to get around without too much pain.

Q. That was in 1929?

A. That was in '29.

Q. How long did this extreme condition remain?

A. Well, that condition I had for about three months, and I finally—that was the time I first went to the Mayo Clinic. In 1930, that was when I went.

Q. In 1930 you went to the Mayo Clinic?

A. Yes.

Q. What, if anything, did they do for you?

A. They gave me a complete medical examination. I went, by appointment of Dr. Garde, who was at that time in the rheumatism section, he gave me a complete examination, and he brought me to Dr. Philip Hench, who was head of the rheumatism section at that time and I believe still is, and Dr. Hench decided I had some sort of rheumatism, my uric acid—

Mr. Callaway: Object to what Dr. Hench's decision was.

928 By Mr. Goding:

Q. Try to refrain from categorizing medically what the condition was.

A. That is what he told me.

Mr. Callaway: I object to testifying to what he told.

Q. It is still, on the basis of my brother's position, it is still objectionable.

A. Well, at that time Dr. Hench told me he recommended—

Trial Examiner Lipscomb: No.

Mr. Callaway: Objection as to what Dr. Hench recommended. You are a lawyer, you know.

Mr. Goding: I object. The witness, I think quite obviously is attempting to tell the story in good faith. He is trying to forget that he is a lawyer. I think that is uncalled for.

Mr. Callaway: I object to that.

By Mr. Goding:

Q. What was the therapy, if you know, that Dr. Hench prescribed for you?

A. Well, No. 1 was weight reduction. No. 2, he gave me a very, what he told me was a very rigid diet. It was what they called a low protein diet. The principal thing was there was practically a total abstinence of meat, fish, or fowl. I think, as a matter of fact, for over a year, a year and a half, I didn't have any of those. The pro-
929 teins in that diet were furnished by cheese and eggs, cottage cheese, American cheese, and by eggs.

Q. Apart from the diet, go ahead.

A. He put me on a regime of salicylate four days a week.

Q. Injectionable or oral, by mouth?

A. By the mouth. I took 60 grains, 12 aspirin tablets a week and with the aspirin I was told to take bicarbonate of soda to prevent excess acidity. The other three days a week I was told to take cinchophen.

Mr. Callaway: I object.

Mr. Goding: He is continuing to say what he took.

Mr. Callaway: And I object and ask that it be stricken from the record. I objected before and it is continued.

Trial Examiner Lipscomb: His objection as to what he was told is sustained, and it will be stricken.

By Mr. Goding:

Q. What, if you know, was the therapy prescribed?

A. Aspirin 60 grains, plus a similar amount of bicarbonate of soda four days a week. Three 7½ grain tablets a week of cinchophen the other three days a week, and on those days I was to eat a lot of sweet things, a lot of sugar, candy, sweetened fruit juices.

Q. I will ask you, how long did you remain at the Mayo Clinic?

930 A. At that time I was probably there ten days or two weeks. I wasn't in the hospital, I just was going to the doctor.

Q. This entire regime of therapy which you described and which you followed, did that affect your condition?

A. I think for the time being I felt better, yes.

Q. Then you came back to Chicago to your home?

A. I came back to my home.

Q. Were you able to get around?

A. Yes, I think that was one of the better years in my recollection.

Q. When did you next have an onset?

A. Well, they came with such frequency, Mr. Goding, that I can't give you all of them, I can only pick out the bad ones. Any result was that there was no month or two-month period that I didn't have an attack of some kind.

Q. Let's say between 1930 and—strike that.

Do I understand that you first went and saw Dr. Rosenberg when was that?

A. That was in 1941. I had been at the Clinic four times before that.

Q. All right. Now from 1930 to 1941, did you see other physicians?

A. Besides those at the clinic?

Q. Besides those at the clinic and besides going to the clinic. Before answer to that is given, did you 931 go back to the Mayo Clinic during that ten-year period?

A. I went back either four or five times before 1941.

Q. Will you tell us what the therapy was generally during those four or five times?

A. Well, I gave up the therapy, it was changed to I only remained on aspirin after about two years. There was a side effect from the cinchophen and Dr. Hench then changed the therapy so I merely took aspirin.

Q. Let me ask you this: Specifically during this entire period to which you are alluding, what were the manifestations of your conditions as you observed them?

A. Well, there would always be a redness, there would be swelling, a rather excessive pain, and my inability to get around.

Q. Now you think you started to say they took you off the salicylate therapy?

A. No, off the cinchophen.

Q. Did they continue with the salicylate therapy?

A. Well, during that period of time, there was a period of a couple of years I didn't take the salicylate at all.

Q. Why was that?

A. Well, I have to tell you what Dr. Hench told me, that is how I can explain it to you.

Q. You went off the therapy, the salicylate therapy, at the direction of Dr. Hench?

932 A. That is correct.

Q. That is as far as we can go with that.

Now, during this period from approximately 1930 until 1941 when you first became a patient of Dr. Rosenberg, is it true that a good part of that time you were unable to get around?

A. Well, I can specifically refer to a matter in 1939. I was at Hartford, Connecticut, on a Federal Trade Commission hearing when I was taken ill, and I remained ill from that time, it was the spring of 1939, we were supposed to adjourn from there to Philadelphia, and I just couldn't make it. I was ill practically continually until 1941 when I got to the Mayo Clinic. I had to give up my business, I wasn't able to take care of it.

Q. All right. Now in 1941, as I understand it, you saw—

A. I then went to the clinic for an examination, and I saw Dr. Naytum in the general medical department. Dr. Hench and Dr. Slocomb, Dr. Hench's assistant, they recommended that I go to St. Mary's Hospital.

Q. Where is that?

A. In Rochester. I had been in St. Mary's at Dr. Hench's direction in 1935 also, and that was the time I met Dr. Rosenberg. He was part of the entourage that would come into the room in the morning.

Q. That would be the grand round?

933 A. That's right. All I know is I'd wake up and I'd see a room full of doctors.

Q. How long did you remain at the clinic in '41?

A. At that time all told when I went to the clinic and hospital it was about three weeks. They wanted me to remain longer, but I couldn't afford it, so I came home.

Q. When you left and came back, how was your condition then?

A. Well, I was barely able to navigate with the aid of two canes, barely able to navigate.

Q. Where was it that you first became Dr. Rosenberg's private patient?

A. Well, that was when he left the clinic and came to Chicago to practice and I think he joined the staff of

Michael Reese Hospital. He had an office at 104 South Michigan.

Q. That was in 1941?

A. Yes, and I didn't know it until the clinic had written me. I wasn't able to get up there physically to see Dr. Rosenberg, he was not in Chicago.

Q. Tell us what your condition was when you saw Dr. Rosenberg the first time as a private patient?

A. Well, of course, it was much better than when he had seen me at the clinic. I had been on the therapy that had been given to me at that time which was 90 to 120 grains of aspirin a day plus a similar amount of bicarbonate of soda for almost two years, and I didn't have the gen-
934 eral debilitated condition I had before. I had localized pains and aches and symptoms at that time. And I visited Dr. Rosenberg from time to time.

Q. Beginning with '41?

A. '43, when he came to Chicago.

Q. I am sorry.

A. Until he went into the Army, which might have been a year and a half or two years later.

Q. During that period between '43 and '45, did you see any other physicians?

A. No.

Q. And as I understand it, your condition was what during that period?

A. It was somewhat better. I was back at the office.

Q. You were able to get around?

A. I had spells, a week or two or three where I might be confined to bed, but I was in general able to function as well as I had functioned in many years.

Q. During the period of Dr. Rosenberg's absence while he was in the Army, did you see other physicians?

A. No. I just followed the therapy that he had suggested to me.

Q. What was that therapy?

A. I was then taking 90 grains of aspirin again with the accompanying bicarbonate of soda. The reason I took
935 it in tablet form, I don't like the salty taste.

Q. When you did see Dr. Rosenberg following his return from the service?

A. I think I saw him—then he moved his office to what was then 58 East Washington Street. They have changed the number of the building.

Q. About when, what year?
A. I should say—I know it was '45 or '46.
Q. Uh-huh. And what was your condition then?
A. Well, every time I saw him, I had an attack; that would be the occasion for my seeing him.
Q. Would he come to your office or would you go to his office or would he come to your home?
A. Frequently he came to my home.
Q. What was his therapy during this period between about '45—
A. Intravenous injections of sodium salicylate. He kept a syringe at my home so he wouldn't have to carry one with him.
Q. Did they afford relief?
A. Yes, with the aspirin that I took by mouth, I could usually manage to get up enough so that I could get on my feet, oh, five or six days, except in a rare instance, and then it meant I could get back to the office three or four days later.
Q. We are talking about the period from '45 to '46 936 when Dr. Rosenberg returned from the service to his profession?
A. From the Army.
Q. You saw him from that time on, as you say periodically when you would have these onsets, until when? When would be the last time?
A. My recollection is I don't think I have seen him in about two years.
Q. That would be '49?
A. '49 I would say.
Q. Generally, what you have told us about the injectibles that he would administer, that was the therapy all through that period?
A. If I was able to come down town and he was busy, his nurse in the office would administer the intravenous injections.
Q. Since you saw Dr. Rosenberg last, have you seen any other physicians?
A. I have seen one doctor on occasions when I had attacks, and he was just to administer the intravenous injections.
Q. Who is that doctor?
A. That is Dr. J. Brodsky.
Q. Have you ever used any drug on your own initiative, that is without a doctor's direction or advice?

A. Yes, I have.

Q. What has that been?

937 A. Imdrin.

Q. Imdrin?

A. Yes.

Q. When did you start to use Imdrin?

A. My best recollection is that it was about the end of 1949.

Q. What was your condition at that time?

A. Well, at the particular moment I don't recall anything wrong with me, but I always have to be prepared, and I always take aspirin, I always have been taking aspirin up until then every day, I took some aspirin.

Q. What effect did taking Imdrin have on your condition?

Mr. Callaway: Just a moment. I object. He is not competent to answer that question.

Mr. Goding: I will ask the question in the proper way and I think it is the proper way. What effect, if any, did the taking of Imdrin have on his condition, and to appease counsel I will add, that the witness observed?

Mr. Callaway: Objection.

Mr. Goding: Or felt.

Mr. Callaway: Objection. This witness is not qualified to state what effect Imdrin had on his condition.

Mr. Goding: Within the area of his vision, his feelings, in other words, all of his senses. He certainly is competent to testify.

938 Mr. Callaway: Not as to the effect Imdrin had on his condition.

Trial Examiner Lipscomb: No, I think not. He testified to the condition before he took Imdrin.

Mr. Goding: I am frankly a little surprised at counsel at this late date becoming so technical. However, I will reframe the question.

Q. Let me ask you specifically, Mr. Vinissky, before you first—immediately before you first took any Imdrin, tell us something about your condition?

A. Well, as I say, it is hard for me to take any specific date and say what the condition was, but as I sit here I am never free from this. Aspirin I found had side effects.

Q. Excuse me, just a minute. Try to concentrate on my question, it is very simple. I am trying to direct your attention to the first time you took Imdrin.

A. As I recall the thing, I had a minor attack, I had gone to the drug store to get some more aspirin. I didn't have any more in the house, and I saw Imdrin, and I looked at the bottle, looked at the ingredients, and I decided that possibly it might be, well, if I changed the method of administering the salicylate, so I took Imdrin. Now I normally never go a day that I don't take 40 grains of aspirin, and that particular day I took two Imdrin tablets when I retired, and took two in the morning, and the next day I was back at the office as normal.

939 Q. When you say you took two, what?

A. Imdrin tablets.

Q. How did it happen that you took Imdrin in place—do I understand you to say you took it in place of aspirin?

A. I did.

Q. How come.

A. Well—

Q. For what reason?

A. I had on many occasions from the taking of aspirin had a burning in the—

Mr. Callaway: Object to his stating the result of taking aspirin. That is not competent from this witness.

Trial Examiner Lipscomb: I think the witness stated just a moment ago why he changed. He said he simply thought he would change the form in which he took—

Mr. Goding: All right. I wanted something more specific, but I will agree with counsel that it might well be objectionable.

Q. Now there has been a little confusion here and you may have said and I will ask you to repeat it if you did, how did you feel immediately after you took the Imdrin?

A. I felt all right.

Q. In what way did you feel all right?

A. Well, the particular pain that impelled me to buy it had disappeared.

940 Q. Now, I see. Will you tell us this: From your experience in using both Imdrin and aspirin on separate occasions, comparatively, how you felt following the taking of each?

A. Well, I had no irritations or side effects from the Imdrin and I felt—

Mr. Callaway: Objection.

Mr. Goding: He had no irritation. I think that may remain in.

Mr. Callaway: Side effects from the Imdrin.

Mr. Goding: Well, side effects.

Trial Examiner Lipscomb: I am not so sure.

A. I might say visible side effects because when you are taking something and you have an intense burning, then you have a fair reason for assuming—

Mr. Callaway: This witness is not in a position to evaluate the effects of drugs.

Trial Examiner Lipscomb: That is recognized.

Mr. Callaway: And I object to that answer and ask that it be stricken.

Trial Examiner Lipscomb: Sustained. It will be stricken.

Mr. Goding: Do I understand there is an objection?

Mr. Callaway: I am objecting to his answer to the thing, going in the record.

Trial Examiner Lipscomb: Will you read that, please?

941 (Answer read.)

Trial Examiner Lipscomb: Off the record.

(Discussion off the record.)

Trial Examiner Lipscomb: On the record.

A. I would say that I felt better after taking Imdrin than taking aspirin and with taking a smaller number of Imdrin pills than I was required to take of aspirin.

By Mr. Goding:

Q. Now that was in '49 I think you said?

A. I started in '49.

Q. Now you have been using Imdrin since?

A. I have used it as late as Friday, Saturday, and Sunday. Just this past weekend.

Q. And generally with the same results?

A. That is correct.

Mr. Callaway: That is objected to. The results of taking Imdrin, the witness is not able to evaluate the results.

Mr. Goding: Yes. I am talking about the results as enunciated by the witness in describing his feelings.

Mr. Callaway: I object to the question. Wait a minute, I want a ruling on the objection.

Trial Examiner Lipscomb: Might we not have a continuing ruling that all statements which are in the form of medical conclusions will be disregarded by the trial examiner and will not be considered as proper evidence, and

942 that will end the matter.

Mr. Goding: No, Mr. Vinissky—

Mr. Callaway: Wait a minute, just a moment. If your Honor please, I don't feel that that is license to ask that question.

Trial Examiner Lipscomb: You may continue to cooperate.

Mr. Goding: I can assure you I am trying to cooperate and expedite this.

Trial Examiner Lipscomb: That will apply throughout the entire testimony of the witness.

Mr. Goding: I think you may inquire, Mr. Callaway.

Cross-Examination by Mr. Callaway.

Q. Mr. Vinissky, you have your office at number ten South LaSalle Street, I believe?

A. That's right.

Q. Your office I believe is in the same building as Mr. Gettleman?

A. The same suite.

Q. Same suite?

A. Yes.

Q. As Mr. Gettleman's?

A. Yes.

Q. How long have you officed with Mr. Gettleman?

943 A. I don't office with Mr. Gettleman. We have individual leases for our own offices.

Q. But it is in the same suite?

A. I have been there nine years, I understand he has been there 20 odd years.

Q. Did Mr. Gettleman and you ever work together in cases?

A. No, I haven't done any work with Frank Gettleman for seven years.

Q. You have in the past?

A. In the past, yes.

Q. Now I believe you said—by the way, have you been able to go to your office every day since 1949?

A. I have been home in bed now for a week. This is the first time I have been out of my bed since last Thursday.

Q. Since last Thursday?

A. That is correct.

Q. And what was the last time just prior to that that you were incapacitated?

A. Probably six weeks before.

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Q. How long were you out then?
A. Probably three or four days.
Q. Three or four days. Well, have you continued to have those kinds of attacks that confine you to your home every month or six weeks or something like that?
A. I have had them for thirty years and six months.
944 Q. Sir?
A. For thirty years and six months.
Q. And they continue as they always have?
A. Sometimes not as bad, and sometimes worse.
Q. And that would hold true clear up to the present time?
A. They are not as bad in the last couple of years, no.
Q. But they are bad enough to confine you to your bed?
A. Well, I run away from them now.
Q. When sir?
A. When they get bad, I run home and stay there.
Q. Now I believe you told Mr. Goding that it was in 1941 I believe you said you saw Dr. Rosenberg at the Mayo Clinic?
A. That is correct. That is when I met him.
Q. And from the period of 1939 to 1941, that was a particularly bad time for you?
A. Very bad, yes, sir.
Q. And that you had pain and swelling and redness in various joints; is that correct?
A. That is correct.
Q. Complete inability to get around?
A. Yes.
Q. Now when you went to the Mayo Clinic, were the symptoms of redness and pain and swelling, were they the main symptoms that you had at that time?
A. Well, that and a complete feeling of—
945 Q. I mean symptoms of which you were aware?
A. I was sick all over, that's about the best way to describe it.
Q. That was a progressive proposition with you when these attacks first came on, you didn't feel sick all over?
A. It always, every time I have had these attacks, I felt like somebody put me through a wringer.
Q. Now who did you learn about Imdrin through or how did you learn about Imdrin?
A. I saw it in a drug store counter.
Q. And I believe you said you went down to the drug store and bought a bottle?

A. That's right.

Q. So you, at the time, were up and around when you bought it?

A. I was able to get around. If I lay down every time I had a pain, I'd never be out.

Q. And then you were able to get around after you bought it and you started using it?

A. I used it and went back to the office the next day.

Q. You had been to the office the day you bought it?

A. I don't remember it, I might have been on a weekend or on a Sunday, I don't know.

Mr. Callaway: I think that is all.

Mr. Goding: That is all. Thank you, sir.

946 Trial Examiner Lipscomb: You are excused.

(Witness excused.)

Trial Examiner Lipscomb: Off the record.

(Discussion off the record.)

Trial Examiner Lipscomb: On the record.

Mr. Goding: I should like to make a statement to the Examiner. As I recall, through the cooperation of both the Examiner and counsel for the Commission's Dr. Weisberg's cross-examination by counsel for the Commission was suspended in order to give me an opportunity to put on these further witnesses whom I have already produced and whom we have disposed of. Now, with your further indulgence, I should like to continue the suspended cross-examination.

Mr. Callaway: Okay.

Mr. Goding: In order to give the doctor, who has examined Mr. and Mrs. Carr and Mrs. Gott, an opportunity to testify.

Trial Examiner Lipscomb: I think that is agreeable.

Mr. Goding: All right. Dr. Weisberg.

DR. EDWARD WEISBERG was thereupon recalled and testified further as follows:

Direct Examination by Mr. Goding.

Q. Now, Doctor, some time today did you see a Mr.

947 E. H. Carr?

A. Yes, I did.

Q. Where was that that you saw him?

A. Ten South LaSalle Street.

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Q. In Mr. Gettleman's office in the suite occupied by Mr. Gettleman?

A. That's right.

Q. Will you tell us what you did in that connection?

A. I obtained a history from Mr. Carr and conducted an examination.

Q. Will you tell us the results of the history and the examination?

A. Would you care to have me relate this to you?

Q. Yes, please.

A. Mr. Carr stated he was 63 years of age. He claimed that a year ago in May, 1950, he developed severe pain in his right shoulder. He remarked the pain was worse on movement and at times so severe that he was unable to put on his overcoat. The movement which was productive of pain mostly was that mainly in raising the arm straight out to the side. He did not consult a physician even though the pain persisted through July of 1950. However, he did try various home remedies to no avail. Then he mentioned that he tried Imdrin. In view of what transpired yesterday, I best make no mention of any results?

948 Q. That is right.

A. In any event, at the time of my examination today, Mr. Carr stated that he had no pain. I determined that Mr. Carr is employed in a machine shop and in the course of his work he uses his right arm a great deal. On examination I found that there was slight crepitus in the right shoulder.

Mr. Carr pointed to the region of his right deltoid muscle as the site of the pain which he had formerly had.

Q. The right deltoid muscle?

A. That is the muscle which is, or shall I say one of the muscles directly below the shoulder joint itself.

I could elicit no tenderness at the time of my examination, and there was no obvious limitation of motion. My diagnosis was hypertrophic arthritis or subdeltoid bursitis, or both.

Q. Now, Doctor, if you were to apply the extensive modes accepted and used by the profession to carry out a full diagnosis including X-rays and all these other things, I ask you whether in your opinion you would find that this man had a condition of some form of arthritis?

Mr. Callaway: Objection. That is purely within the realm of speculation.

Mr. Goding: I think—well, may I ask a preliminary question. I would like to withdraw that.

Q. Doctor, are you in a position on the basis of the
949 examination that you performed and the history you took from Mr. Carr today, to state whether you could form an opinion now as to whether on a full routine or regime of diagnosis that the condition which ultimately would be shown by such extensive diagnosis would fall within one of the categories of arthritis?

Mr. Callaway: Objection. In other words, he is asking could he give an opinion now as to what his opinion would be under other circumstances.

Mr. Goding: It is a little more specific than that.

Mr. Callaway: It is purely speculative.

Mr. Goding: It is more specific than that. I am asking him if he is in a position, on the basis of what he has already seen, to be able to say whether the more extensive diagnosis would demonstrate a form of arthritis.

Trial Examiner Lipscomb: I think the question is objectionable.

Mr. Goding: I would like to make an offer of proof in that regard to save myself in the record, and I offer to prove through this interrogation now that such an extensive diagnosis as has been alluded to would show that this Mr. Carr had some form of arthritis, and further than that, I offer to show that the doctor is in a position on the basis of his examination and history taken from Mr. Carr to make such an appraisal.

950 A. I should like—

Mr. Goding: Excuse me.

Trial Examiner Lipscomb: Doctor, you could not make a diagnosis independent of the history, could you?

A. Yes, I could within limits.

Trial Examiner Lipscomb: Just looking at the patient and examining him?

A. You mean entirely apart from the history?

Trial Examiner Lipscomb: Yes.

A. It would be extremely difficult. It would be difficult.

Trial Examiner Lipscomb: It would be extremely doubtful?

A. Yes, however, I don't know whether or not I may answer at this point?

Trial Examiner Lipscomb: I guess you better not, Doctor. You better not. You have already answered that question.

Have you anything to say?
Mr. Callaway: No, sir.

By Mr. Goding:

Q. Now you saw Mrs. Olive Mae Carr today?
A. Yes, I did.
Q. At the same place and either immediately before or after or you saw her about the same time you saw him?
A. Yes, after.

951 Q. Will you tell us about the history you took and examination you performed of Mrs. Carr?
A. Mrs. Carr stated she was 53 years of age and said that she was an order writer.
Mr. Callaway: What?
A. She wrote orders for some industrial concern. She stated that she had first noticed a pain in the right side of the neck about two years ago. Most often it was present when she assumed a position for writing. Weather apparently had no decided effect on her. The pain was sufficiently severe so that she attempted various remedies without effect, and eventually she tried, one of the things she tried, was Imdrin. She noticed that the pain tended to be intermittent, its appearance or disappearance varying with the use of medication.
Mr. Callaway: That is the same proposition again.
Trial Examiner Lipscomb: I think so. It is an indirect way of having the witness evaluate the effect of the medical preparation.
Mr. Goding: Well, we have had the evidence come in directly. We are not going to argue the point. I assume you are talking now about the narration by this lady of the effects or results of taking Imdrin.
Mr. Callaway: Yes.

Mr. Goding: As far as that is concerned, it may 952 be stricken. She has testified directly.

A. When I obtained the history, I obtained whether the pain is constant, that is the nature of the information obtained or given to me.

By Mr. Goding:

Q. Doctor, let me ask you, was that apart from her taking Imdrin?
A. No. Her contention was that it wasn't apart.
Q. Let's skip over that then.
A. On examination I found that she was edentulous.

Mr. Callaway: What does that mean?

A. Without teeth.

I found that there was moderate tenderness along the superior border of the left trapezius muscle. There was no limitation of the motion of the arm, there was no deforming of the shoulder, there was no crepitus, and my impression was that she was suffering from fibrositis or muscular rheumatism.

By Mr. Goding:

Q. Now, Doctor, I should like to ask you whether you can form an opinion on the basis of your examination of Mrs. Carr and the history that you took, whether you are in a position now to say now whether you believe that upon the more extensive diagnosis which we have already discussed, including x-rays and blood and so forth,
953 whether that would disclose that this lady has some form or had some form of arthritis?

Mr. Callaway: Objection.

Trial Examiner Lipscomb: Objection sustained.

Mr. Goding: I should like to make the same offer of proof in this instance with regard to Mrs. Carr that I made with regard to Mr. Carr, and I think probably to protect myself on the record I should say specifically that I offer to prove by this interrogation that if the doctor were permitted to answer that he could say yes, he could form an opinion and that the result of such a further and much more extensive diagnosis would result in a showing of some form of arthritis.

Q. Now, doctor, I refer you to Mrs. Katherine Gott. Do I understand that you examined her today?

A. Yes, I did.

Q. At the same place, 10 South LaSalle Street?

A. That's right.

Q. Will you tell us what your examination and the history you obtained disclosed?

A. Surely. I found Mrs. Gott to be a 40-year old obese female. She stated that she was first troubled by pains in both forearms about three years ago. However, the pain at all times seemed somewhat worse in the right forearm. It seemed to start in the region of the elbow and radiate down toward the fingers. She has gained the
954 impression that the pain is worse when her hands are placed in water in the course of her household duties,

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or when the weather is inclement. She has noted also that the pain tends to become more severe after she has been inactive for a time. She has seen no private physician, but has managed to obtain a measured relief by taking medication without the benefit of medical advice.

On examination I found that she was obese and edentulous. Examination of the affected parts revealed that there were no abnormalities of the elbows. However, there was slight swelling and some tenderness of the joints of the fingers of the right hand. There was no definite limitation of motion. My diagnosis was arthritis, type undetermined.

Q. Doctor, I ask you whether in your opinion you could form an opinion as to whether the more extensive regime of diagnosis that we have discussed would show some form of arthritis in this instance?

Mr. Callaway: Objection.

Trial Examiner Lipscomb: Objection sustained.

Mr. Goding: I shall make an offer of proof that by this interrogation we propose to show that the doctor is in a position to form such an opinion and that that opinion is that after the extensive regime of diagnosis, this woman would be shown to have and to have had some form of arthritis.

Trial Examiner Lipscomb: Counsel will note each 955 of the Trial Examiner's rulings has been based on the fact, as stated by the witness, that his opinion as he would seek to give it would be based largely upon the history of the patient as told to him when the patient was not seeking medical treatment, but was coming to him preparatory to assuming the witness stand, and that the doctor, the present witness, could not independent of that history perform an opinion as to the malady of the patient. That is the basis of the Trial Examiner's ruling. I want that understood.

Mr. Goding: I don't want to spend any time on this.

Trial Examiner Lipscomb: I wanted to make it clear.

Mr. Goding: I recognize that I would have great difficulty in changing the Examiner's mind, but I do think I should make this statement, and that is that we all here from our experience solely based on the record in this case have sufficient information on the different types of arthritis that these pains as described and given to the doctor in the histories by the various people, are such as ordinarily are attendant with some form of arthritis.

I think that is all. May we go off the record?

Trial Examiner Lipscomb: Off the record.

(Discussion off the record.)

Trial Examiner Lipscomb: On the record.

956 Mr. Goding: I would like an opportunity to ask one or two brief questions, if I may.

Trial Examiner Lipscomb: All right, you may have that privilege.

Mr. Goding: Thank you, sir.

Q. Doctor, on reflection it may be that in my interrogation of you and in my statement of offer of proof, I may have unfairly to my client indicated that what I called the more extensive regime of diagnosis actually is not so extensive. Now, will you tell us what that would entail more than what you have done with each of these individuals?

A. I am afraid I don't quite understand.

Q. Well, my question is this: If you had more time to examine, apart from the history, to examine and use whatever means are available to medical science today to help you to ascertain the specific condition of a party that you suspected of having arthritis, what would you do?

A. If there was any need at all for additional work, in some instances it isn't, I would be most inclined to ask for an x-ray of the part, certainly, and of lesser importance possibly a determination of the sedimentation rate.

Q. So that there would be two more means, x-ray and sedimentation rate?

A. Those are the things which come to mind, I can't think of anything important beyond those.

Q. I think the Examiner asked you a question, and
957 it is not too clear to me what the answer was. I should like to ask you specifically which would be the most important part, which aspect, the history or the physical examination including the x-ray and the sedimentation rate?

A. I should point out that any proper and complete examination takes cognizance of both the history and physical findings. However, if I were compelled to choose between the one and the other, I would be more inclined to desire the history than examination itself. Mind you, I mentioned I'd hate to be put in that situation where I would have to make such a choice.

Q. Doctor, I would like to ask you this question: Whether in each of these cases concerning which you have

testified, where you have examined the people either yesterday or today and night before last, whether you are satisfied from your brief examination and the history that these people have arthritis in the various forms, or had, that you have testified to?

A. You mentioned that it was a brief examination. I'd like to point out that that doesn't necessarily make it inadequate, not by a great deal, and there were a number of instances when I mentioned quite emphatically that it was my belief that individuals had hypertrophic arthritis. In those cases I feel very strongly that further evidence, the sort adduced by x-rays, would add nothing to the
958 diagnosis. The clinical evidence was so clear-cut that in my mind there would be no doubt whatsoever regarding the nature of the disorder and it is my very distinct impression that the neophyte in the practice of medicine would have been compelled to make a similar diagnosis.

Mr. Goding: I think that is all.

Mr. Callaway: Just a moment, cross-examination.

Cross-Examination by Mr. Callaway.

Q. In other words you can reach a conclusion, a definite conclusion as to hypertrophic arthritis without any x-rays, without any sedimentation rate, and on the basis of the type of examination that you gave these witnesses; is that correct? A definite diagnosis?

A. On the type of examination, not in the case of every such individual, of course. Not in the case of everyone I examined, but on the basis of that type of examination, yes.

Q. Now, then, on the basis of the ones that you did examine?

A. Who had that condition, yes. I claim that in my mind there would be no doubt regarding the diagnosis in those that had hypertrophy.

Q. In other words, as far as these particular individuals are concerned, no further x-rays, I mean no x-rays, sedimentation rate, urinalysis or anything would be of assistance in reaching the conclusion that they had
959 hypertrophic arthritis? If you have already reached a definite conclusion, then you don't need anything else to help you reach a more definite conclusion?

A. It would be additional evidence, but it wouldn't be necessary to establish a diagnosis, that's right.

Q. Now, Doctor, did you see Mr. Peter J. Maretta, I believe he was the first one of these witnesses who testified that you examined, and I believe you said he was not complaining of any present aches or pains; is that right?

A. That is correct.

Q. And that your physcial examination was completely negative, I believe that is the language that you used, revealed nothing of significance, is that right?

A. That is correct.

Q. Now what did your examination consist of, your examination of Mr. Maretta?

A. I determined his pulse rate, his temperature, blood pressure, his weight; he undressed, I examined his scalp, his eyes, nose, mouth, and throat, tympanic membranes.

Q. What are tympanic membranes?

A. His eardrum, his lungs, his heart, his abdomen, and his prostate gland and his extremities including of course his joints. It was in essence a complete examination.

Q. Do you have notes there that you have, or is part of what you said from memory?

960 A. Part of that is from memory.

Q. For instance, do you have a note that you examined his prostate gland?

A. No, but I know I did.

Q. That is from memory?

A. That's right.

Q. How many of these witnesses have you examined?

A. Eight or ten, aren't there, just roughly.

Q. Over the last couple of days?

A. That's right.

Q. Of course this is one examination out of that number by you, and it was the only examination of Mr. Maretta. Now if your statement as to what you did as far as your examination of Mr. Maretta varies from what his statement is, would you be inclined to accept his statement as to what type of examination you did?

A. Not necessarily.

Q. But you'd have no X-rays, no blood studies, no urinalysis?

A. That's right.

Q. Now, was your handling of Mr. Maretta typical of your handling of patients?

A. Depending on the nature of the complaint.
Q. Well, was it typical?
A. No, in this instance I did more than I often do.
Q. What is that?
961 A. In this instance I did more than I often do for many.
Q. Now, Doctor, is there such a thing as referred pain?
A. Yes, sure.
Q. What does that mean?
A. It means that although pain is felt in a particular part of the body, actually it means its origin is elsewhere.
Q. Could not the pain that Mr. Maretta told you of have been referred pains?
A. You are asking if it is possible. It is always possible.
Q. Could they not have been referred pains?
A. I can't come to any conclusion in regard to that since there was no pain present at the time of my examination.
Q. What was that?
A. I can't come to any conclusion in regard to that since there was no pain present at the time of my examination.
Q. So if there were referred pains, then your diagnosis of fibrositis might be wrong?
A. But that is a most unlikely supposition.
Q. Wait a minute. You are examining a man there that doesn't have any pain. If you had examined him when he did have pain, you might have found the source of the referred pain, if it was referred pain?
Mr. Goding: I shall have to object to this. The point I submit that counsel seeks to make is based entirely on conjecture and there is a way to do it. It is both by
962 bringing in independent evidence or by argument.
Now, I submit asking the doctor as to what might have been, in the very nature of these circumstances, is so conjectural that we just aren't going to get anywhere.
Mr. Callaway: Your Honor, it is all a might have been. His direct testimony might have been.
Trial Examiner Lipscomb: I think counsel is allowed questions that are conjectural on the part of an expert witness.
Mr. Goding: May we have an exception.
Mr. Callaway: Will you read that question?

(The reporter read the question as follows:

"Question: You are examining a man there that doesn't have any pain. If you had examined him when he did have pain, you might have found the source of the referred pain, if it was referred pain?")

Mr. Goding: I might suggest this: That the manner in which this question is put is objectionable. If it is put on a proper hypothetical basis, that's one thing, but this far-fetched approach, based purely on conjecture—

Trial Examiner Lipscomb: If it is far-fetched, I think the witness will be able to handle the situation.

By Mr. Callaway:

Q. Isn't that correct?

963 A. In order to answer that, I think I should have to speak briefly on the nature of referred pain. A pain when referred has its origin usually in some part of the body which is supplied by nerves which are termed the autonomic nerves, the visceral pain felt in the body not infrequently some distance from the origin site of the pain.

I should say to that, if an individual makes a very direct statement regarding a site of pain, one doesn't presuppose that it is a referred pain because that occurs relatively infrequently, and more often one has an origin located at the site of the pain. In this particular instance I can't at the moment conceive of a site of visceral pain which would result in radiation to the right tibia, the right knee and right groin. One can, I suppose, make any sort of assumption and yet from the standpoint of probabilities, if for no other reason, I don't see how that situation could obtain in this situation.

Q. Don't nerves come from the backbone and run down toward the legs?

A. They most certainly do, and as I say, if the pain originates in the viscus or some structure which is supplied by nerves of the autonomic system, it can then travel to the spine and off the spinal nerve to the point there the individual feels it, but I don't know what visceral point might have been responsible for a cutaneous distribution of this sort.

964 Q. Well, now, cutaneous means right at the skin, is that what you mean by cutaneous?

A. I mean that, but that particular distribution.

Q. In other words, it wasn't just a cutaneous pain?
A. No, but over that area of the skin and beneath it.
Q. The nerves come from the spinal cord and go down to that area, do they not?
A. They do.
Q. Could this have been a referred pain from any place along the spinal column?
A. No, pain isn't quite referred in that fashion.
Q. Didn't you just say that?
A. Not from the spinal column, no.
Q. No, come off from the spinal cord, then the nerves come out from the interstices of the backbone and run down the leg?
A. Yes.
Q. Could it not be a referred pain from where that nerve took off from the spinal cord?
A. That isn't by definition a referred pain, however.
Q. Could that have been the situation that I am talking about?
A. Might it have been a neuritis rather than a referred pain?
Q. Might have come from the nerve in the spinal column and him have pain in his leg as a result thereof?
A. As a result of involvement of the nerve itself?
965 Q. Yes.
A. A possibility.
Q. Now, if that were true, then your definition of fibrositis, your diagnosis of fibrositis would have been wrong, wouldn't it?
A. If that were the case.
Q. I see.
A. In that event it would have been a neuritis.
Q. And in fact that could be many such circumstances involving a nerve that would not be fibrositis?
A. Not many, no.
Q. Several?
A. What apart from, from neuritis?
Q. I am asking you.
A. I don't know what you have in mind. I think of a neuritis, but I don't know what you have reference to.
Q. Now, Doctor, your diagnosis I believe of Mrs. Rhoda Lipsie was hypertrophic arthritis?
A. That is right.
Q. On what did you base your diagnosis?

A. The presence of Heberden's nodes.

Q. If you had not found the Heberden's nodes, you would not have been able to diagnose it as hypertrophic arthritis; is that correct?

A. It certainly would have been an element of doubt.

966 Q. Now is Heberden's nodes ever associated with anything else but hypertrophic arthritis?

A. No. By definition they are the particular deformity found in the presence of hypertrophic arthritis.

Q. And have Heberden's nodes ever been confused with any other similar deformity?

A. Not if one has had experience with those things. It would be most unlikely.

Q. Of what did your examination of Mrs. Rhoda Lipsie consist?

A. There I limited myself to the examination of the affected part.

Q. Now you mean examination of that part only?

A. Yes.

Q. And what were those affected parts?

A. Her left hand.

Q. Left hand?

A. That's right.

Q. You didn't give her any such complete physical examination as you gave Mr. Maretta?

A. No, I didn't.

Q. Do you think that on the basis of that physical examination which you gave her that your judgment that she has hypertrophic arthritis might not be changed upon a more thorough physical examination?

967 A. Not at all. A more thorough examination might have shown the co-existence of other things, but the findings were so typical that it was necessary to only examine the hands to establish hypertrophic arthritis at least.

Q. If a thorough physical examination might have revealed another condition along with hypertrophic arthritis, might not the pains which she described have been the result of the other condition rather than the hypertrophic arthritis?

A. That would be a perfectly illogical conclusion, I believe, because the obvious cause is right at hand.

Q. What?

A. The obvious cause of pain is right at hand.

Q. Now you do have hypertrophic arthritis sometimes without pain, don't you?

A. Sure.

Q. And you have Heberden's nodes without pain, don't you?

A. Sure.

Q. So that if she had Heberden's nodes—

A. And if she had pain.

Q. And if she had pain, and if a further physical examination might have shown some other concurrent condition, how were you able to say that the pain would be the result of hypertrophic arthritis rather than the concurrent physical condition?

A. There is a process of reasoning termed the
968 deductive method.

Mr. Goding: Excuse me. When counsel asks for repetition, I think the reporter might read it back. This has happened too frequently.

Does that complete your answer?

A. No, that was the beginning.

Mr. Goding: Go ahead.

A. I might phrase it somewhat differently and say it comes down to a matter of two and two equal four. If an individual has a pain in his big toe, you don't look for a boil on his neck to explain the cause of the pain. It is obvious if the individual in question complains of pain at the site of pathology, it stands to reason that the cause is apparent. Any physician would operate on the diagnosis of that disease.

Q. But she didn't have any pain when you examined her, did she?

A. No, she had no pain, but I claim only that the existence of Heberden's nodes indicates the presence of hypertrophic arthritis.

Q. Now your examination of Mrs. Ida Klaus, I believe you state was confined to the affected parts, was it not?

A. Yes, sir, that is correct.

Q. Now what part did you examine?

A. I examined her knees, both knees I might say, both legs.

969 Q. No x-ray studies, no x-rays, no blood studies, no urinalysis either with Mrs. Rhoda Lipsie or Mrs. Ida Klaus?

A. Correct. And in my opinion unnecessary.

Q. No further physical examination except the affected parts?

A. Correct.

Q. And what was your diagnosis of her condition?

A. She had—

Mr. Goding: Mrs. Ida Klaus?

Mr. Callaway: Yes.

A. Hypertrophic arthritis.

Q. Doctor, what are foci of infection?

A. According to the theory which is postulated, an area of inflammation localized to a particular part of the body is responsible for the production of toxins which set up disturbances elsewhere in the body.

Q. Now, could that have been true in her case?

A. No. My feeling is that it wasn't, this condition was not due to focus of infection.

Q. Now you say your feeling; are you guessing, is that what it is?

A. Not at all. I am basing that on available evidence.

Q. The available evidence consisting of examination of her knees and history?

A. Correct.

Q. You didn't look at her throat even?

970 A. No, sir, I don't recall.

Q. She might have had bad tonsils?

Mr. Gettleman: If your Honor please, the doctor answered the question succinctly. He said it was limited to the examination of her knees and history. He did not, by virtue of that answer, I think it is very clear, he did not look at her throat or ears or anything else.

Trial Examiner Lipscomb: I think that is true.

By Mr. Callaway:

Q. The tonsils might have been the cause of the condition which you found?

A. I might say at this time regarding whether there is anything to it is conjectural.

Q. Do you subscribe to the theory of focus of infection?

A. I would reserve judgment. I would be inclined to feel that there is something to it. However, many of my colleagues who are most capable are inclined to feel that there isn't.

Q. Do you take the foci of infection theory into account in diagnosis of the ailments of your patients?

A. I do, but never in the production of hypertrophic arthritis.

Q. I believe Mrs. Ida Klaus said she had been in the hospital here in Chicago, didn't she?

A. She was in a hospital as I recall because of a fracture of the hip.

971 Q. Fractured kneecap?

A. No, hip I thought.

Q. A hip?

A. Yes.

Q. Did you make any inquiry at the hospital where she was as to what they found?

A. No. Her hip had given her no trouble in so far as I was concerned.

Q. You didn't need any evidence of what the findings might have been in regard to her physical condition when she was in the hospital to help you make a diagnosis?

A. She stated, as I recall, that she fell on her hip and was hospitalized for that reason, and I didn't pursue the matter further.

Q. You didn't pursue the matter further?

A. I didn't pursue it farther?

Q. She told you, didn't she, that they took x-rays of her shoulders and various other parts of the body, didn't she?

A. I don't recall, I don't remember.

Q. You weren't impressed by it if she did tell you that?

Mr. Goding: Again we are getting into conjecture.

Mr. Callaway: It is all conjecture.

Mr. Goding: You are asking if she told him.

Trial Examiner Lipscomb: Off the record.

(Discussion off the record.)

972 Trial Examiner Lipscomb: On the record.

By Mr. Callaway:

Q. Now in regard to King Hayes, he had no complaints at the time you examined him I believe, is that right?

A. That's right.

Q. And you found his joints quite normal?

A. That's right.

Q. Your physical examination revealed nothing?

A. That's right.

Q. And without any x-ray, without any blood examina-

tion, without any urinalysis, solely on the history reported to you, you made a diagnosis of gout; is that right?

A. No, sir, I expressed some reservations at that time.

Q. I believe you said something about the fact that your physical findings were negative, confirmed the diagnosis of gout, didn't you?

A. If I did, and I don't recall that, it was unfortunate. I meant to say that fact tended to confirm the diagnosis of gout.

Q. If you were to examine me and didn't find any physical evidence of disability, that would tend to confirm the diagnosis that I had gout; is that right?

A. Very definitely if you had offered a history of awakening with excruciating pain in the proximal metaphalanges articulation of either foot, the pain lasting
973 perhaps for some hours and days and then subsiding and leaving no obvious evidence of the episode. Under those circumstances, even though I found nothing in your case, I would be justified I think in making a tentative diagnosis of gout.

Q. How long did he tell you he had these pains, when did he tell you these pains first started?

A. In 1932 when he was relatively young. At that time, as a matter of fact, he was 22.

Q. Doctor, don't you get serious destruction of joint bone tissues in gout?

A. In some instances, depending upon the number, duration, and severity of the attacks.

Q. And the length of time, too, isn't that one of the factors?

A. No. When the disease is inactive, it is not painful. It is only during.

Q. I mean, but he had it off and on since 1932, had he not?

A. As a matter of fact, five episodes.

Q. But you found no evidence of any—that is your physical findings were negative?

A. That is right.

Q. Now what did your physical examination of King Hayes consist of, what did it consist of?

A. An examination of his lower extremities. In other words, the site of his complaints.

974 Q. That is the only place you examined him?

A. And I also rather carefully inspected his ears.

Q. Did you find any tophaceous deposits in his ears?
A. No.
Q. No evidence of tophaceous deposits in his ears?
A. No.
Q. Let's see, in your physical examination of Mr. Carr, I believe, did I understand you to say that was negative or not?
A. No. I didn't say that was negative.
Q. What did you say?
A. There was some crepitus in the right shoulder.
Q. What did your examination of Mr. Carr consist of?
A. That consisted of an examination of the area of the right shoulder and the right forearm.
Q. Didn't you give him the type of examination that you gave Peter J. Maretta at all?
A. No, I didn't.
Q. Now you say your physical examination was not negative?
A. That's right.
Q. What did you find positive in the physical examination?
A. I mentioned that a moment ago.
Mr. Goding: He just said crepitus, he just finished saying that.

By Mr. Callaway:

975 Q. Do you ever get crepitus without having hypertrophic arthritis?
A. Surely, in a fracture, for example.
Q. He had no current pains at the time you examined him?
A. That's right.
Q. And he had slight crepitus I believe you said?
A. That's right.
Q. And upon the basis of slight crepitus and no other physical finding, you give a diagnosis of hypertrophic arthritis?
A. No, sir. If you recall I expressed some doubt about that diagnosis. It might have been hypertrophic arthritis or subdeltoid bursitis, or both.
Q. You excluded everything else but those two?
A. For all practical purposes.
Q. Do I understand you to say that there is some doubt in your mind as to whether he had either one or just doubt as to whether he had hypertrophic arthritis?

A. No. As a matter of fact, if I were pressed and absolutely had to commit myself, I would say in all probability he had a degree of hypertrophic arthritis, and I feel rather strongly that x-rays would offer confirmation of that fact. If I am vague in regard to the exact diagnosis, it is only because I wish to be most careful.

Q. What did your physical examination of Mrs.
976 Carr consist of?

A. Mrs. Carr was good enough to take off her garments so that her chest was exposed, and I examined the upper part of her chest and her neck incidentally.

Q. Did you use a stethoscope?

A. I included her mouth. No, the complaint didn't warrant the use of a stethoscope.

Q. You did examine her mouth?

A. Yes, that's right.

Q. Now of what did your examination of Mrs. Gott consist?

A. I made note of her weight.

Q. What was that?

A. I made note of her weight. That was a rather obvious condition. I noted the fact that she had pyorrhea. I examined her arms, her forearms, and her hands.

Q. What is pyorrhea, doctor?

A. An infection around the gum margins.

Q. Would that be a possible focus of infection in her condition?

A. If one recognized the existence of focus of infection, that would be a possible foci, although I wouldn't care to say whether or not it was responsible for her condition. I can't say that.

Q. You can't say it was?

A. No.

977 Q. Could you say it wasn't?

A. I can only say that she had arthritis and as I indicated the type is undetermined, so it may be the hypertrophic.

Q. None of these examinations, as I understand, on none of them did you have the benefit of x-ray, blood examinations, or urinalysis; is that correct?

Mr. Goding: We have gone into that. Go ahead.

A. I should point out there was some reasonable doubt in my mind regarding the exact diagnosis. On the other hand, when I rather definitely stated that the individual

was suffering from hypertrophic arthritis, it was my feeling that the laboratory procedure that you mentioned would really add nothing to the diagnosis. Surely, urinalysis would reveal nothing of significance. Hypertrophic arthritis is a rather unique disorder, there is no other disease quite like it, there are no abnormal findings in the urinalysis relating to the condition. I grant you that the x-ray could conceivably offer objective evidence of the condition. However, I insist that one wouldn't have to have the x-ray to make the diagnosis with a fair degree of certainty, and as far as the sedimentation rate, while one might include it, it is normal in the case of hypertrophic arthritis.

Q. All of these examinations except that of Mr. Maretta, I believe, were made in the suite of offices occupied by Mr. Gettleman, attorney in this case, were they not?

978 A. Yes, sir.

Q. Do you have your office in the same suite?

A. No, sir.

Q. Now how many other people did you examine in this suite of offices in addition to those about whom we have talked?

Mr. Goding: When, and it is not clear to me what the purpose of this question is.

Mr. Callaway: I don't know whether he usually examines patients in Mr. Gettleman's office or not?

A. I can answer the question.

Mr. Goding: Answer.

A. Two.

By Mr. Callaway:

Q. Two. Who were they, give me their names and addresses?

A. One is Mr. Gettleman and the other I have forgotten.

Q. Mr. Frank Gettleman?

A. No, Mr. Arthur Gettleman.

Q. And that is Arthur Gettleman?

A. That's right.

Q. Who else?

A. I can't recall the name, I am sorry.

Q. What was the occasion for examining Mr. Gettleman?

A. That was a confidential matter.

Q. It didn't have anything to do with this law suit?
A. No, it didn't.

979 Q. Now the other person whose name you have forgotten, did he come there for examination just like these other people who testified did?

A. No, sir, he didn't.

Q. Was it a woman?

A. Yes, that's right.

Q. Did she come there at the behest of Rhodes Pharmacal Company or anybody connected with Rhodes Pharmacal Company?

A. No, sir.

Q. In other words her examination had nothing to do with her being a prospective witness in this case; is that right?

A. That is correct.

Q. Then all of those persons who were examined in this suite of offices for the purpose of them becoming prospective witnesses in this case, you found that every one of them had some type of arthritis?

A. Certainly, all, I didn't so indicate, no.

Q. Arthritis or rheumatism we will say.

A. If you will make that rheumatism instead of arthritis.

Q. You are talking about the case of fibrositis?

A. Or possibly bursitis.

Q. You didn't examine Mr. Maretta in this suite of offices?

A. Quite right. However, one individual might have had bursitis and Mrs. Carr I said might have had fibrous rheumatism, you are quite right.

980 Q. Let's see, you were examining these folks over there in Mr. Gettleman's suite of offices yesterday and also today, is that correct?

A. Yes.

Q. You were called by the Respondent in this case to testify as an expert earlier in these hearings, as you will remember, you examined these patients, I mean these various folks who have testified here, in the attorney's office just a short while before each of them testified; you have spent yesterday, part of yesterday, and part of today on the witness stand yourself as a witness for the Respondent. Just what is your connection with the Respondent in this case, Doctor?

A. I really don't know how to answer, in what sense do you mean that?

Q. I am trying to find out what is your connection with the Respondent.

A. I can tell you what exactly has occurred. I was called and asked if I would examine some individuals in an attempt to find out whether or not they had any disease which might be correlated with certain of their complaints, and I said I would, and that was the extent of it. I appeared, they told me their stories; I was introduced to them, and I examined them as I have indicated, and that was all.

Q. Some of them didn't even know you were a doctor?

A. Evidently they didn't. That was unfortunate
981 but simply a misunderstanding. I thought they were so informed before I saw them.

Q. When did you get these various examinations?

A. What is that?

Q. What did you get paid for these various examinations?

A. Well, this I might say, there hasn't been a single word in connection with payment in regard to the matter, although I shall undoubtedly receive payment.

Q. What was that?

A. There hasn't been a word thus far in regard to payment.

Q. Do you expect to be paid?

A. I should think so.

Q. I say, what do you expect to be paid?

A. I don't know.

Q. You don't know what you expect to be paid?

Mr. Goding: I think he may say he doesn't know. He undoubtedly hasn't evaluated it. I object to the extent to which this sort of cross-examination is going.

Trial Examiner Lipscomb: Objection overruled. It is a common practice both of Respondent's attorneys and attorneys for the Commission to make such inquiry from the witness. It is a proper question.

By Mr. Callaway:

Q. What do you expect to be paid, Doctor?

A. There has been no mention of a sum to me, no
982 mention whatsoever, and I myself am hard put to produce an answer. I suppose it should in part depend on your own exertions.

Q. On your cross-examination by me?

A. That may well be the case.

Q. Well, you definitely expect to be paid for your testimony here, don't you?

A. I should hope so.

Q. Would you expect—

A. As far as I was concerned, that was a tacit understanding.

Q. —and you would expect to be paid for your examination here in line with what you stated that you expected to be paid for your previous testimony?

Mr. Gettleman: Just a moment, if the Examiner please. I think this is where an objection should be interposed. He said nothing about being paid, what he was paid for previously. He answered these questions very clearly. Nothing was mentioned about pay. He states that he expects to be paid. He didn't know how much. I think that answers the questions. It is forthright, it is straightforward. Why compare it with some testimony that was given a long time ago? He has answered the question already.

Trial Examiner Lipscomb: I don't recall what his past testimony was, counsel, but it doesn't seem to me to answer the question merely to say he expects to be paid.

983 That doesn't give an answer.

Mr. Gettleman: He says he doesn't know how much.

Trial Examiner Lipscomb: If he doesn't know, pray tell me who does?

Mr. Gettleman: Nobody knows at this present time.

Trial Examiner Lipscomb: All right.

By Mr. Callaway:

Q. What were you paid, Doctor, for your previous testimony in this case?

Mr. Gettleman: Just a minute. I object to that, if the Examiner please, it has nothing to do with the direct examination with this witness today.

Trial Examiner Lipscomb: All right, off the record.

(Discussion off the record.)

Trial Examiner Lipscomb: On the record.

By Mr. Callaway:

Q. What did you get paid for your appearance as a witness at the last hearing—I mean when you testified before?

Mr. Gettleman: Object to that for the same reason that I expressed before.

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Trial Examiner Lipscomb: Objection is sustained.

A. Mr. Examiner, may I off the record ask a question?

Trial Examiner Lipscomb: Off the record.

(Discussion off the record.)

Trial Examiner Lipscomb: On the record.

984 Mr. Callaway: That is all.

Mr. Goding: That is all.

Mr. Gettleman: That is all.

At this point we don't know whether or not we are going to close. We may close or rest with this hearing, but our client is out of town and we should know within the next four or five days and I can communicate with you, Mr. Lipscomb. We may rest, or we may require one more short hearing, and I will know in about four or five days.

Mr. Callaway: Let me ask this, when you do let him know, will you request a certain date for the hearing?

Mr. Gettleman: Subject to everybody's convenience, of course.

Trial Examiner Lipscomb: Off the record.

(Discussion off the record.)

Trial Examiner Lipscomb: On the record.

The statement of counsel for the respondent is gratifying, to see the case completed as soon as possible, and closed. If hearing is desired by the respondent, the Examiner suggests that the Respondent ask for a hearing on the 6th to the 8th of June or during the week of June the 16th to the 22nd, designate the place, of course, and the probable length of the duration.

Mr. Gettleman: We will know that in five or six days.

985 Trial Examiner Lipscomb: Is there anything further?

Mr. Goding: I would like to ask this question. We had a ruling that has been suspended, a ruling on the admissibility of certain evidence. You stated you wanted to present certain authority.

Trial Examiner Lipscomb: Yes.

Mr. Goding: If it develops there will be no further hearing, I would like permission to submit the authority to you in Washington and have an opportunity to argue.

Trial Examiner Lipscomb: There being nothing further, the hearing is adjourned under conditions just stated.

Mr. Goding: Thank you.

(Whereupon, at 4:00 p. m., Wednesday, May 23, 1951, the hearing in the above-entitled matter was adjourned.)

986 Room 1153, 201 Varick Street,
New York, New York,
June 27, 1951.

Met, pursuant to notice, at 10:30 a. m.

Before:

Abner E. Lipscomb, Trial Examiner.

Appearances:

Joseph Callaway, Attorney for the Federal Trade Commission.

James B. Goding, Attorney for Respondent J. Sanford Rose (653 Washington Bldg., Washington, D. C.).

987 Proceedings.

Trial Examiner Lipscomb: The hearing will come to order. You may call your first witness.

Mr. Goding: Thank you, sir. I call Mrs. Marchena.

Trial Examiner Lipscomb: Mr. Reporter, this is Mrs. Marjorie Johnson Marchena, 27-33 West 119th Street, New York, N. Y.

MARJORIE JOHNSON MARCHENA was thereupon called as a witness for the respondent and, having been first duly sworn, testified as follows:

Direct Examination by Mr. Goding.

Q. Mrs. Marchena, you are a married woman?

A. That's right.

Q. Mrs. Marchena, some time in the past did you have some pain or pains in your body?

A. Well, yes, I did. I had muscular pains in my body.

Q. What part?

A. In my shoulders, in my arms, hands and my lower limbs.

Q. About when did they start?

A. Well, I had had the pains, I guess, about a year; from 1948 up until 1950.

Q. Did you consult a physician with regard to these pains?

A. Yes, I did.

Q. Who was that physician?

988 A. Dr. Olivert.

Q. Do you happen to know his first name?

A. Yes. Hudson.

Q. Is he a physician with an office in New York City?

A. Yes, he is.

Mr. Callaway: How do you spell his last name?

The Witness: (Spelling.) O-l-i-v-e-r-t, Olivert.

By Mr. Goding:

Q. Did he examine you?

A. Oh, yes.

Q. And did he prescribe a medicine for you?

A. Yes, he did.

Q. Was it one type of medicine or more?

A. Well, it was more. Because I had a liquid medicine, and then I had capsules.

Q. Did you have any relief?

A. Well, no, I didn't. I had taken the doctor's medicine time after time. I would have a prescription refilled. But I didn't see where they helped me.

Q. Sometime subsequent to treatments by Dr. Olivert, did you learn about Imdrin?

A. Well, yes, I did; in listening to the program, I think it was 7:30 in the evening, and the announcer was Gabriel Heater.

Q. Before we get into your use of Imdrin, had you 989 tried any other medicant, or drugs, on your own initiative?

A. Yes, I did. I tried the Dolcin, and I tried liniments, and I also tried the baking.

Q. Did you try anything else?

A. Well, I had taken aspirins and I had taken Anacins, and anything any one would come along and tell me to take, I would take it.

Q. Did you have any success in relief from your pains and aches in the use of any of those?

A. No, I didn't seem to.

Q. Some time after you heard, as you say Gabriel Heater, did you use Imdrin?

A. Yes, I did.

Q. And about when was that?

A. That was in the year of 1949.

Q. Can you tell us how you felt after you first started to use Imdrin?

A. Well, I used the Imdrin tablets. The first week that I used them, I had taken two at each time, which was three times a day.

Q. That would be six tablets a day?

A. Yes. I had taken six tablets a day. Well, I used those for the first week, and I began to feel a relief from it.

Q. From the pain?

990 A. From the muscular pains that I had. And then after that bottle was gone, I think I used that bottle, it lasted me I guess, about two weeks, because Mr. Marchena and myself both was using it.

Mr. Callaway: Excuse me. I believe at this point I want to object to her description of muscular pains. I think the pains may be nerve pains, and would probably be indistinguishable by a lay person from muscular pains; so I am doubtful.

Mr. Goding: I might be able to obviate this by a question.

By Mr. Goding:

Q. Can you tell us precisely and specifically where, in the members that you referred to, your arms and legs, where specifically did you have pain?

A. It was from the shoulder all through the arms, and the fingers (indicating). Then from the knees on out to my toes (indicating).

Q. As I understand it, about a week after you commenced to use Imdrin, you noticed that your pain was diminished, or your pains were diminished?

A. Yes, they were. May I interrupt just a minute?

Q. Yes, you go right ahead.

A. The doctor called it arthritis that I had.

Mr. Callaway: I object to that, of course.

991 Q. I might explain to you that you are not legally competent—

A. Yes.

Q. (Continuing.) —to tell us what the doctor said, nor can you yourself, attempt to diagnose your condition.

A. Yes.

Mr. Goding: So I am agreeable to have that stricken.

Trial Examiner Lipscomb: It will be stricken.

By Mr. Goding:

Q. For how long a period did you use those Imdrin tablets in the dosage of six tablets a day?

A. Well, I used those I think, about three weeks.

Q. About three weeks?

A. To the time that I really felt relief, and found out the swelling from my limbs were disappearing.

Q. You hadn't said anything about swelling before. Where was this swelling?

A. The swelling was in the feet and the knees. And also the hands.

Q. When did that swelling subside after you started to use Imdrin?

A. I think about three weeks after I started using the Imdrin.

Q. At the end of that time, at the end of that three week period, did you stop using Imdrin or did you continue?

992 A. No. I used the Imdrins up until now.

Q. Did you stop at any time between the time that you first started to use Imdrin and the present time; did you stop taking them six a day?

A. Yes, I did.

Q. And when was that?

A. I would take one.

Q. When was that?

A. I guess that was in March 1950.

Q. That you stopped taking six a day?

A. That's right.

Q. And at that time was your pain all gone?

A. Yes, my pains were all gone.

Q. Was your swelling all gone?

A. And the swelling, yes.

Q. At my request, did you communicate with the office of Dr. Edward B. Miller of 1130 Park Avenue of this city?

A. Yes.

Q. And make an appointment?

A. Yes.

Q. For him to examine you?

A. That's right.

Q. And did you keep that appointment?

A. Yes, I did.

Q. And did he in fact examine you?

993 A. Yes, he did.

Q. Do I understand you to say that you still use Imdrin on occasions now?

A. Yes, I do. I keep a bottle of Imdrin in the house.

Q. Does that mean that you sometimes have a recurrence of these pains?

A. No, I don't have any return, but I keep it there. Once in a while Mr. Marchena, if I am in order, he complains every once in a while about having a pain and an ache.

Mr. Callaway: Objection of course; that wouldn't be permissive.

The Witness: All right, I am sorry.

Mr. Goding: It is all right. You have done very well. You have answered my questions directly. I want to thank you. I think that is all.

Cross-Examination by Mr. Callaway.

Q. When did you say you started taking Imdrin?

A. In 1949.

Q. What time in 1949?

A. Well, I think it was about—as I said, it was about March or somewhere in there.

Q. Of 1949?

A. That's right; 1949.

Q. And you took six—

994 A. Tablets a day.

Q. Six tablets a day?

A. That's right.

Q. Until, I believe, March 1950?

A. That's right.

Q. Approximately?

A. That's right. I didn't take six a day until 1950. As I told you, for three weeks that I had taken the six tablets a day, then I ceased taking the six tablets, and was taking one tablet.

Q. I understood you to say on your direct examination that you stopped taking six tablets a day in March 1950?

A. Yes.

Q. How long had you had these pains, did you say?

A. Oh, I had had the pains quite a long time, because I had been suffering with those pains, I think, more than a year or so. Because we lived in a basement apartment—if I am in order to answer the question that way.

Q. Yes.
A. We lived in a basement apartment, and that is why I had to go to the doctor.
Q. It was damp?
A. And the doctor said it was from living there. No, it wasn't damp, but he said it was below the surface, and we should move out.
995 Q. Did you?
A. Yes.
Q. When did you move out of there?
A. We have been where we are more than a year.
Q. In other words, you moved last spring, that is you moved in the spring of 1950?
A. 1950.
Q. And when you moved there, you moved to another apartment that was not a basement apartment; is that right?
A. That's right.
Q. When was it you went to see Dr. Miller that Mr. Goding asked you about? This Dr. Miller that you went to see at Mr. Goding's request?
A. Am I supposed to answer that question? I went to see Dr. Miller last Friday.
Q. Last Friday?
A. Yes.
Q. And that was at the request of Mr. Goding?
A. That's right.
Q. At the time you went to see Dr. Miller, you weren't having any pains, as I understand it?
A. No.
Q. You went there solely for the purpose of having him examine you for the purpose of this lawsuit; is that correct?
996 A. That's right. And not knowing that this was a lawsuit I didn't know that. I didn't know anything about it.
Q. You knew you had been asked to come down here and testify?
A. That's right.
Q. And you knew that he wanted you—
A. No, I hadn't been asked to come down here and testify. Because I am going to be frank, if I am in order. What I thought, you have to pardon me, Mr. Goding, because I will have to say this: I thought I was going to

come down to do some broadcasting. May I speak about the—

Mr. Goding: I should interpolate and say I am sorry if I misled you. I certainly wanted to make it clear that I wanted you to come here and give a statement.

The Witness: Yes. You did mention a statement.

By Mr. Callaway:

Q. How long were you in Dr. Miller's office?

A. Well, I was there several hours.

Q. I mean you were waiting for him most of the time?

A. Certainly.

Q. After you got to see him, how long a time were you with him?

A. Well, Dr. Miller examined me, I was on the table, he examined me on the table, on the examining table. And I had X-rays and all. And I suppose I was in there

997 I guess, about four, five hours.

Q. You mean after he started examining you?

A. Well, I wouldn't say I was in the examining room four, five hours. But I was in the office four, five hours, and I suppose in the room about an hour and a half.

Q. Did he take any blood from you?

A. No.

Q. He gave you a physical examination?

A. That's right.

Q. Did he make any urinalysis?

A. No.

Q. This question may be a little out of order, but it may have some bearing on the matter, and so I want to ask you how old you are?

A. I am not ashamed to say how old I am. If I live to see another January coming, I will be 67 years old.

Q. I will say you don't look it.

A. Thank you.

Trial Examiner Lipscomb: And the Trial Examiner doesn't think you look it either.

The Witness: Thank you.

By Mr. Callaway:

Q. You said, I believe, that before you started taking Imdrin you took Dolcin?

A. Yes, I did.

998 Q. How many tablets of Dolcin did you take?

A. I tell you, I didn't use a bottle of Dolcin, because it didn't agree with me.

Q. But you did—

A. It didn't agree with me at all. But I think I had taken about three of the Dolcin tablets.

Q. Only about three Dolcin tablets?

A. That's all.

Q. You also said you used aspirin some?

A. Yes.

Q. How many aspirin tablets would you take at a time when you took them?

A. Only one at a time.

Q. Did you take them in—I mean sort of in the same way regularly, like you took the Imdrin?

A. Yes, I would. I would take that sometimes, take one or two aspirins a day.

Q. For how long a period of time did you take them?

A. I didn't use that very long, because aspirin didn't seem to help me. Then I started Anacin.

Q. Would you say you took the aspirin a week or two?

A. No, no.

Q. Just two or three days, maybe?

A. Yes.

Q. And then you used Anacin?

999 A. That's right.

Q. How many Anacin tablets did you take?

A. Like I did the aspirins.

Q. How long a time did you take them that way?

A. I guess two or three days with the Anacins.

Q. Let's see now if I understand you: While you were taking aspirin, you took one or two a day for two or three days?

A. That's right—I had taken two aspirin tablets a day.

Q. Two aspirin tablets a day for about three days?

A. About three days; that's right.

Q. And while you were taking Anacin, you took two Anacin tablets a day for about three days?

A. That's right; about a little bit longer than I took the aspirins.

Q. About four or five days?

A. That's right.

Q. While you were taking Dolcin, did you take the Dolcin according to directions?

A. Yes.

Q. You only took three Dolcin tablets?
A. I didn't take but three Dolcin tablets.
Q. Three Dolcin tablets?
A. That's right.
Q. As I understood you now, when you went to see Dr. Miller last Friday at the request of Mr. God-
1000 ing, counsel for the respondent in this case, there was nothing the matter with you at that time?
A. Absolutely not.
Q. These pains and aches I believe you said, came on you in 1948, approximately?
A. I said 1949.
Q. I thought you said you first started—
A. I said I had had them a year. I had had this a year, you see, 1949, approximately '50.
Q. I see. I beg your pardon. Had you ever had any pains similar to those previous to that time?
A. No.
Q. And it came on you about March 1950?
A. I couldn't say definitely—
Q. I mean 1949; I beg your pardon.
A. I couldn't say definitely just when they came on me. I say around that time.
Q. Now how long was it you went to see this Dr. Olivert that you talked about?
A. Dr. Olivert attended me quite a long time.
Q. Well, two months or three months?
A. Well, yes.
Q. And then after you had treatments from him for two or three months, after that, was that when you started taking first the Dolcin—
1001 A. I just stopped having Dr. Olivert go to the house, because I went to the office. Because I didn't see that he was doing me any good.
Q. Then you started taking first the Dolcin—
A. That's right.
Q. And then the aspirin?
A. No, I took the aspirins before I had the Dolcins.
Q. But that was still after you got through with Dr. Olivert?
A. That's right.
Q. You took the aspirin first—
A. No, I had the aspirin even before I had Dr. Olivert.
Q. Did you go back to aspirin after you got through with Dr. Olivert?

A. I certainly did not.
Q. But then is when you started taking the Dolcin first after you got through with Dr. Olivert?
A. That's right.
Q. And then the Anacin?
A. No.
Q. You had the Anacin—
A. The Anacins were taken before.
Q. Before you went to see Dr. Olivert?
A. That's right.
Q. Are you employed?
1002 A. No, I am not. I am just an assistant to my husband, to Mr. Marchena.
Q. What business is he in?
A. Mr. Marchena is a superintendent of two buildings.
Q. Does your assisting him require that you be down to the buildings?
A. We live in one of the buildings. That is in 23. We live there.
Q. What kind of work do you do assisting him?
Mr. Goding: I don't want to object, but I am wondering what it has to do with the case.
Trial Examiner Lipscomb: I think it doesn't. Do you press the question?
Mr. Callaway: I think it all might have a bearing on the condition.
Mr. Goding: She says she is not using it now.

By Mr. Callaway:

Q. Were you assisting your husband when you were taken with these pains?
A. No, I was not. I have only been assisting him where I am living now, and because the work is a little bit more.
Q. Were you working anywhere at all away from home—
A. No. Only the ministry. I work in the ministry and also I am connected with the 32nd Co-ordinating Council Police Precinct, and also the 28th Precinct Co-or-
1003 dinating Council.
Q. You are assisting in the ministry, you say?
A. That's right. I am an ordained minister.
Q. Of what religion?
A. Of the Methodist.
Mr. Callaway: I think that is all.

Trial Examiner Lipscomb: You are excused. Thank you.

(Witness excused.)

Trial Examiner Lipscomb: Off the record.

(Discussion off the record.)

Trial Examiner Lipscomb: On the record. Call your next witness, Mr. Goding.

Mr. Goding: I call Mrs. Raaberg.

Trial Examiner Lipscomb: Mr. Reporter, this is Mrs. Betty Raaberg, 546 Senator Street, Brooklyn 20, New York.

BETTY RAABERG was thereupon called as a witness for the respondent and, having been first duly sworn, testified as follows:

Direct Examination by Mr. Goding.

Q. Mrs. Raaberg, you are a housewife?

A. Yes.

Q. And you live with your husband?

1004 Q. In Brooklyn?

A. Yes.

Q. Some time in the past, did you have some pain or pains in your body?

A. Well, I have a little ache and pain you know. But when I take this here Imdrin for a couple of days, it go away, you know.

Q. What I am asking you now, I am trying to direct your attention back, some time when you first started to have aches and pains. Did you have aches and pains in the past?

A. How long do you want to go back?

Q. Well, from the very beginning.

A. You mean that I shall go back when I started with the Imdrin, or before?

Q. Before. When did you first start having aches and pains?

A. I tell you, I had it for about ten years.

Q. Ten years ago what parts of your body were affected or did you have pain in?

A. I tell you, they were a little all over. My knee had been bad. I am not the kind to go to doctors for nothing, you know.

Q. What knee was that?
A. The right.
Q. The right knee?
1005 A. Yes.
Q. Any other parts of your body?
A. Yes. Well, my right shoulder had a little trouble too, you know, a little stiffness in my hands.
Q. So it was your right knee principally, and—
A. That is what really gave me trouble, my right knee. That give me much trouble, that I started the Imdrin.
Q. Were you ever in such pain that you weren't able to get around?
A. I could get around, but I couldn't get down, I couldn't go down the stairs and bend the knee here.
Q. When did that develop?
A. They were in the last part of the summer in 1949, up to the fall, or something like that.
Q. I see. Almost two years ago?
A. Yes, about that.
Q. And then you said something about taking Imdrin. How did that come to your attention?
A. Well, I tell you why it come to my attention. I hear it over the radio Gabriel Heater advertisement, and I have so much pain there in my knees, I said to my husband one Sunday, I had such terrible pains, I said, "Go down and get some Imdrin; there must be something in that that they advertise it."
1006 So he went down before the drugstore closed at 2 o'clock. So just before I eat I took two of the Imdrin, and I get relief, you know.
I can't say it disappeared, you know. I mean, I get relief in my body, and I can move a little around.
Then before supper I took two again, and that was the first night for a long time I could have the blankets—
Q. Do I understand you to say—
A. While I lie in my bed before I took the Imdrin, I couldn't have any blankets to touch my knee.
Q. In other words, if anything touched your knee, it was very painful?
A. That's right.
Q. And after you commenced to use the Imdrin, then you could use the blanket?
A. In the night.

Q. Without pain?
A. Even the first night.
Q. Even the first night?
A. The first night I had taken about four pills. But I couldn't move around like I want. I was more easy anyway as I could before.
Q. How long after that first day that you used Imdrin were you able to get downstairs where you previously were unable to?
A. I would say two days.
1007 Q. Two days later you were able to go downstairs?
A. I took the Imdrin three times a day, you know.
Q. For how long a period before that first day that you started to use Imdrin would you be unable to go downstairs?
A. I tell you, I had gone downstairs when I couldn't bend the knee. I have to go one leg at a time, and not bend the knee, you know. That was why I get like an old woman. I am not so old yet, you know.
Q. In any event, after the use of the Imdrin for three days, about, you were able to go downstairs by normally bending your knee?
A. Yes. Anyway, without so much pain.
Q. For how long did you use the Imdrin?
A. Well, I used—well, I will say for a month and a half. I can't say—one jar and a half, then I stopped; because I feel I don't want it to be a habit, and I am all right, you know.
Q. I see.
A. And I don't want it to be a habit with me.
Q. That was for about a month and a half. Have you used it since?
A. Well, I will tell you now, my age you can get a little stiff once in a while then I take it, but my knee hasn't.
Q. Your knee hasn't kicked up again; is that what you say?
A. No, it hasn't.
Q. Had you seen a physician, or a doctor, about
1008 your pains and aches before you took Imdrin?
A. I asked a doctor, because I am financial secretary, so I have a free doctor.
Q. Financial secretary of what?
A. At the Foresters of America. And I ask a doctor

at one time, so I ask, "What do you say about it?" "Oh," he said, "take some aspirin."

Well, aspirin, I have tried it before; they don't help me. And on the other hand, I can't take it, it is likely bother my heart when I take aspirin. So I didn't take it. So I am not much to go to doctors.

Q. Had you taken anything else for your condition beside this aspirin of which you speak, and the Imdrin?

A. No.

Q. Did you write a letter to Gabriel Heater?

A. Yes.

Q. Expressing your gratitude?

A. Because I was so happy. So I said to my girl friend—my English is not too good when it comes to telling. So I said to her, "I think that I will write a letter to Gabriel Heater; if it could help somebody else." Because I was so relieved, you know.

Q. And then, is it a fact that I got in touch with you and asked you to communicate with Dr. Miller?

A. Yes.

1009 Q. Dr. Edward B. Miller at 1130 Park Avenue?

A. Yes.

Q. And did you in fact see Dr. Miller?

A. I did.

Q. And did he examine you?

A. He did. He examined, fluoroscoped my hands and my shoulders.

Q. Fluoroscoped your hands and your shoulders?

A. Yes.

Q. How about your knee?

A. He bent it like that (indicating). He said, it will hurt now. It don't hurt. It will hurt anybody that takes that on the knee.

Mr. Goding: I think that is all.

Cross-Examination by Mr. Callaway.

Q. Mrs. Raaberg, when was it your knee, your right knee, got so bad you couldn't go down steps, bending it?

A. Well, I will say it might have been like that for about two weeks. Because, as I tell you, I don't go to doctor for a little ache and pain, you know. I am not so much for doctor, you know.

Q. It had been that way for about two weeks when you started taking Imdrin?

A. I think it will be like that. And then it was so
1010 bad, I feel I couldn't stand it. I said to my husband, "Peter, go down and buy the Imdrin. There must be something about when they advertise it."

Q. You felt that because Gabriel Heater was advertising it in the manner that he was—

A. Anybody.

Q. Wait just a minute, please. (Continuing)—like that, because Gabriel Heater was advertising it in the manner in which he was, that it must have some merit; is that right?

A. No, that is not right; because any one that will advertise things like that, and somebody else, I will take the advice. So they are not, because of the manner of Gabriel Heater.

Q. I don't understand you. You mean you took it because Gabriel Heater advertised it?

A. Well, Gabriel Heater; yes.

Q. You have confidence in what he says; is that right?

A. Yes, I have a confidence. I said to my husband, "There must be something about it."

Q. Gabriel Heater wouldn't be advertising it otherwise; is that it?

A. Well, you might say that. Almost that.

Mr. Goding: I don't think that—

A. I don't think that is a fair question, because I don't think more about Gabriel Heater than other one, you
1011 know, that had advertised it. And I only come here to tell the truth, but the truth.

Mr. Callaway: That is all right; I understand it.

Mr. Goding: I think the record is clear on what her attitude was.

By Mr. Callaway:

Q. Had your knee ever been that bad, in other words as I understood you, your knee had gotten bad, so bad that you couldn't go up and down steps, that is, without being stiff?

A. That's right.

Q. About two or three weeks before you started taking the Imdrin?

A. Yes.

Q. Had it ever been that bad before that period of time?

A. No, no. They haven't. They haven't been aching, I had some pain in there before.

Q. You had had some pain in there before?

A. Well, a little, because as you say, when your age come, you can expect a little in your limbs you know. That is what I thought it was.

Q. And you took the Imdrin I think you said, two or three days, and you were able to go up and down stairs without—and bend your knee?

A. I could do it. But they were not completely
1012 gone, but before I couldn't bend my knee when they were not completely gone.

Q. You still had some pain?

A. Yes, a little pain I had. That is why I kept it on for a month and a half.

Q. Have you had any pains—

A. Not in my knee.

Q. (Continuing)—since then?

A. No.

Q. Have you had any pain in the other knee since then?

A. Not this knee (indicating) and this shoulder (indicating). Some day it could be good, and some day they can be worse, you know. And you know sometimes your fingers feel like little stiff. Then I took, might be a day or two this here Imdrin. Now I get a good belief in Imdrin, because they help me, you know.

Q. Do I understand you to say that your shoulder has been stiff—

A. Not stiff; bother me.

Q. Pain, that is all in your shoulder?

A. That's right.

Q. When was the last time you had that?

A. Yesterday.

Q. Yesterday?

A. Yes. That is nothing, because—

1013 Q. When was the last time you took some Imdrin?

A. Last week.

Q. How many did you take?

A. I only took one day.

Q. You took it one day last week?

A. I tell you. When I feel a little stiffness, I take them to help me. Like to get my limbs to move without I don't feel anything.

Q. You don't understand this of course—don't misunderstand me, but I am addressing this to the Court—

Mr. Callaway: She, of course, has stated that Imdrin has helped her several times, and that is not—that is contrary to the rules of evidence as I understand it. I am making an objection to all such statements and ask that they be stricken. They have come out so fast, so that I couldn't object each time.

Trial Examiner Lipscomb: The Trial Examiner will view the witness's testimony in light of her abilities to describe her ailment.

By Mr. Callaway:

Q. When did you see Dr. Miller?

A. I saw Dr. Miller yesterday. I had an appointment, I can't remember what day, last Friday or a week ago, but I called, I couldn't make the appointment that day. So I said I will call back, if I saw I could make the 1014 appointment. So I saw Dr. Miller yesterday.

Q. You went to him at Mr. Goding's request, I understand?

A. Mr. Goding's—I never see Mr. Goding before.

Q. I mean, at the request of the Imdrin folks?

A. Yes. He called me up and asked, and I say of course, I will. I write the letters, I mean what I write, and I will do.

Q. You mean Dr. Miller called you up?

A. No, not Dr. Miller.

Q. The Imdrin man called you up and asked you to go to see Dr. Miller?

A. Dr. Goding, or the Imdrin man.

Mr. Goding: Thank you very much, but it is Mister.

The Witness: Mr. Goding called me up. I ask him, I couldn't make this, because you had this hearing today, so I said, "Well, then, I will make it my business and do it today"—yesterday you know. I did it, and I come here today, because I like if other people have been helped too.

By Mr. Callaway:

Q. How long was Dr. Miller examining you?

A. Well, I will say about fifteen minutes. I get a fluoroscope, you know, and I have my clothes off, and my stockings down, and he examined both my knees and my shoulder; my hand.

Q. Did he make any blood test?

A. Blood test, no.

1015 Q. He didn't draw any blood from you to test?
A. No. I didn't want him to do that either, because I didn't need the doctor. I only did it because this is testimony.
Q. In other words, if you are going to Dr. Miller without any cost—
A. No, no.
Q. It was only for the purpose of this hearing?
A. No. I didn't need the doctor.
Q. Did he X-ray your knees?
A. He fluoroscoped me, you know.
Q. Fluoroscoped?
A. Yes.
Q. Both knees?
A. No, only to one. There is nothing wrong with that one (indicating).
Q. Only your right knee is what he fluoroscoped?
A. Yes.
Q. Is that all he fluoroscoped?
A. No, my hands, my shoulder.
Q. Your hand and shoulder?
A. Yes.
Q. That is your right hand and shoulder on your right side?
A. There is really only this shoulder (indicating) that bother me. This here (indicating). I haven't felt
1016 anything. Sometimes my hands have been a little stiff. You can see they are not bad you know (demonstrating).
Q. He did not take any picture of your hand, your left hand or your left shoulder, as I understand it?
A. Yes, he fluoroscoped anyway, you know, this here hand; both hands, you know.
Q. When you went to Dr. Miller, you weren't actually having any pain, as I understand it?
A. Well, I had little pain, as I said yesterday. This shoulder (indicating). But I didn't have anything today. So, so long it is not bad, I don't take any pills or anything.
Q. You didn't have any pains in your knee today?
A. No, no.
Q. About this Imdrin that you took, what had you taken, if anything before you took Imdrin?
A. Well, as I told you, I haven't been taking anything. The doctor said to me, I am to take some aspirin.

Q. Wait just a minute. You can't tell what the doctor said to you. But you had taken some aspirin before or not?

A. I can't stand aspirin, so that is why I come back. I said to the doctor, "It is no use you give me that, because I can't take aspirin."

Q. Did you go to see that doctor, or were you just talking to him?

1017 A. No, I don't go to see him. I used to ask him, I was there in his office, as I say, as a financial secretary, so I ask, "What am I going to do, Doctor, if I feel I have some pain in my knee?" So he said, "Well, take some aspirin."

I said, "I don't care for the advice, because I can't take aspirin anyway."

"Well," he said, "all right." "Then they come and they go."

Q. Of course you can't tell what the doctor told you and you are just continuing to do it.

A. Don't you worry. I always tell the doctor what I mean. Because I can better feel my ache and pain than the doctor can.

Mr. Goding: May we go off the record for a minute?

Trial Examiner Lipscomb: Off the record.

(Discussion off the record.)

Trial Examiner Lipscomb: On the record.

By Mr. Callaway:

Q. You say you are financial secretary of some lodge?

A. At the Companion of the Foresters of America, and I have belonged there for 21 years.

Q. Is that—

A. That is a sick benefit insurance.

Q. So you are employed in that capacity?

1018 A. I am not employed, you know. You know, you can't get employed. I get, not very much I get paid, $6.02.

Q. I didn't understand that.

A. I said you can hardly call it employment because I only get $6.02 a month for my services.

Q. Did I understand you to say that you had had these pains in your legs and in your shoulders on and off for ten years?

Mr. Goding: She didn't say "legs."

A. No, I didn't say "legs", because that is the really

first time this last part of the summer and fourteen days before I really took the Imdrin. It has been so bad I couldn't stand it. Because I can stand a lot of pain without going to a doctor.

Q. Had you had pains in your shoulders, as I understood you to say, for ten years?

A. No. I said I had a little ache and pain off and on. I didn't even say my shoulder. I can't even remember where I had the ache and pain for ten years.

Q. In other words, you haven't had any aches and pains that amounted to anything in ten years, until this attack?

A. No, no. That's the truth. I had it once. As I said, off and on. You don't even pay attention to it.

Q. As I understand you, you are a housewife, outside of this little work that you had with that insurance outfit?

1019 A. Yes. And I will tell you, at least one day my friends know how happy I am this time I took the Imdrin, so they told me, if they need my name—

Mr. Callaway: Objection.

Mr. Goding: I think counsel is somewhat unfair where he permits the witness to talk and talk until she reaches the point where he doesn't begin to like what is being said.

Mr. Callaway: Objection, if I were to cut her off you would be objecting to it.

Mr. Goding: I am sure you let her go on as long as you feel probably—

Trial Examiner Lipscomb: Let the witness finish. Continue.

The Witness: Thank you.

A. I tell you, I told my friends about that, about what I write in the letter, and I told them about this here. I said, I can give you ten names and addresses—they said, "Use my name any time you want to, Mrs. Raaberg because I know you tell the truth, only the truth." Because I have a very good reputation in these circles where I come.

Mr. Callaway: That is all.

Trial Examiner Lipscomb: You are excused. Thank you very much.

(Witness excused.)

1020 Trial Examiner Lipscomb: Off the record.

(Discussion off the record.)

Trial Examiner Lipscomb: The hearing is adjourned to reconvene at 2 o'clock.

(Whereupon, at 11:35 a.m., a recess was taken until 2 p.m., this day.)

1021 Afternoon Session.

2:00 p.m.

Trial Examiner Lipscomb: The hearing will come to order.

Mr. Goding: I call Dr. Miller.

Trial Examiner Lipscomb: Mr. Reporter, this is Dr. Edward B. Miller, 1130 Park Avenue, New York, N. Y.

EDWARD B. MILLER was thereupon called as a witness for the respondent and, having been first duly sworn, testified as follows:

Direct Examination by Mr. Goding.

Q. Doctor, you are a physician licensed to practice in the State of New York?

A. Yes.

Q. What is the nature of your medical practice; are you a general practitioner or a specialist?

A. I practice internal medicine.

Q. Will you tell us something—with all due modesty—of your background, educational first?

A. I am a graduate of the University of Chicago, 1933, B. S. My medical degree was from St. Louis University in 1937.

I interend in medicine at Michael Riess Hospital in Chicago for two years. Then I had a two-year fellow-
1022 ship in research and clinical medicine at the Pratt Diagnostic Hospital in Boston, where I had special training in diseases of the blood.

In 1941, on the completion of that, I went into the Army and was in the Army for four and a half years.

I was released from the Army, and I entered practice in New York City.

At the present time I am associated with two hospitals: I am an associate attending in medicine at the Hospital for Joint Diseases; and I am an assistant visiting physician on the Columbia Division at Bellevue Hospital.

Q. Will you tell us of your membership in any local medical societies?

A. Well, I am a Diplomate of the American Board of Internal Medicine. I am Associate Fellow of the American

College of Physicians. I belong to the usual local societies here. I am a member of the International Society of Hematology, and also of a New York blood group called the society for the Study of Blood.

Q. What is the significance of your membership or your status rather, as a Diplomate of Internal Medicine, is that what you called it?

A. Yes. Well, I satisfied the requirements which are at least three years graduate training in internal medicine, in addition to a year's general interneship.

1023 And then, a cooling off period of five years, when I went into the Army.

Membership in that, or diplomate status, in addition to those qualifications, depends on taking written and oral examinations, which I took—I took the last part of the examinations in the spring of 1946.

Q. About how many diplomates are there, if you know?

A. In internal medicine?

Q. Yes.

A. My recollection is that the last figure I heard—and it increases each year very markedly, because certification by the Board first took place in 1936 I believe—my understanding was that there were about 6,000 at that time.

Q. What relationship is there between internal medicine and the diseases commonly known as arthritis and rheumatism?

A. The diseases of the so-called arthritis, it is a disease that is handled by a number of people. It is handled ordinarily, by internists; it is also handled by orthopedists, because of some operative procedures that come in, and there are people who are internists, who have had special training or special interests in diseases of joints, and that is—it is a rather fairly new specialty, within the field of internal medicine.

But we consider arthritis to be one of the diseases that is ordinarily handled by an internist.

1024 Q. To what extent have you, in your medical practice—both in your medical practice and in your hospital work—treated, diagnosed, conditions of arthritis or rheumatism?

A. Well, frankly, I have seen much more of it in hospital work, because this hospital at which I am associate attending in medicine is a hospital that originally was an orthopedic hospital and, as you can see from the name, Hospital for Joint Diseases.

It is now a complete hospital. It has medical services, gynecological services, and pediatrics and so forth. But it still is dominated by the fact that it cares for bone and joint diseases.

So that I think in my hospital work, that I see more arthritis than I would otherwise.

Q. Have you written any papers, Doctor, that have been published?

A. Yes, I have.

Q. Will you tell us something about those?

A. All the publications that I have written have had to do with blood diseases, which has been my primary interest. I started publishing in about 1940 at the time of my fellowship in Boston. By 1945, at the time I went into the—no, by the time I had gone into the Army I had written eight medical publications. In the Army I wrote one, as I recall—two.

1025 I now, at the present time have—I wrote one that appeared last year. I now have three in press, and I have two that are being prepared for submission for publication.

Q. The ones that have been published and those which are in process of publication, are they all and were they all in medical journals?

A. Yes, they were.

Q. And I think you said that for the most part, the subjects dealt—or did they deal exclusively with blood?

A. They dealt exclusively with the blood situation.

Q. Doctor, some two or three weeks ago, did you receive a call from me requesting you to make some examinations of what I thought then would be several people?

A. Yes.

Q. And it developed that there were three?

A. That's right.

Q. And did you, in fact, both physically examine and take medical histories from three different people, Mrs. Marjorie Marchena?

A. Yes.

Q. Mrs. Betty Raaberg?

A. That's right.

Q. And Mr. Robert S. Greenfield?

A. Right.

Q. Do you have some notes with you, Doctor, that
1026 will refresh your memory with regard to your findings? If so, I wish you would refer to them.

I now direct your attention to the case of Mrs. Majorie Marchena. Will you tell us first when you saw her, and where?

A. I saw her in my office on June 22nd.

Q. Will you tell us first the history which you took from her?

A. She told me—

Mr. Callaway: I object to that, of course; that's hearsay.

Trial Examiner Lipscomb: Objection sustained.

Mr. Goding: I should like to ask your Honor's indulgence to permit this testimony to go in subject to a ruling on the admissibility at a subsequent date, after I have had an opportunity to submit authorities, rather than to make a statement of offer of proof. I think probably it would best be done this way.

Mr. Callaway: In other words, you want to offer the testimony of this witness as an offer of proof; is that what you mean?

Mr. Goding: Essentially that. I might state this: We had some confusion in the record, deriving from the last session, or the last session of hearings in Chicago. Now, I have examined the report relating to the proffered 1027 and actual testimony adduced by Dr. Weissberg, and what I thought were the comments of counsel and the Examiner, and I frankly don't see where there was any ruling contrary, or against the interests of my client, in connection with his testimony. So that I think, as it is now spread on the record, this is the first time that there has been an unequivocal ruling adverse to our position in connection with this type of evidence, that is, the history given by these people by lay users.

Trial Examiner Lipscomb: When they approach the doctor not for medical treatment, but for purposes of preparing him as a witness in this proceeding.

Mr. Goding: We had the very same situation there. All I am saying is that it doesn't appear in the record that that evidence, that proffered evidence, was excluded. It is in the record, and I suggest to your Honor now that this is the first time that it is apparently about to be excluded. I merely say that in all fairness to counsel—

Mr. Callaway: I believe I withdraw my objection, and I will let him testify about that.

Trial Examiner Lipscomb: If you withdraw your objection, the witness may testify.

Mr. Callaway: I believe I will withdraw it.

Trial Examiner Lipscomb: Objection being with-
1028 drawn, proceed with your examination.

The Witness: Would you repeat your question, please?

(The reporter read the question as follows:

"Question. Will you tell us, first, the history which you took from her?")

A. This is what she told me: She said, "I first developed arthritis in 1949," and when I asked her what she meant by that, she said she developed pains in her legs and arms.

By Mr. Goding:

Q. This is Mrs. Marchena?

A. Right. She went to see her physician, who did not take any X-rays, but agreed with her that she had arthritis.

She complained of pain and stiffness, pain with walking. She said on some days it was so severe that she was unable to walk. She said she had back pain, pains in her feet and her knees also. She said there were times when she thought there was some swelling of her feet and her knees.

She also said that her knees and feet at times when they were most painful, she said there was redness present.

She also complained of pain in her shoulders, and in the back of her neck.

Q. Presently, or in the past?

A. This is in the past.

Q. All right, continue.

A. Then she told me about some pills that she
1029 took. She said that she took Dolcin. She took aspirin.

I don't recall whether she mentioned whether she had any effect from Dolcin or not. But she said she took aspirin and it helped her for a while, and then she became—she no longer responded to aspirin.

She said specifically that she had no help from Dolcin. I have that later in my notes.

She took Anacin for a while. She said, Anacin helped for a while, and then she became retractive to that.

In February of 1950, she said she took Imdrin, and she took two tablets three times daily. She said she started to improve rather quickly. And her pains, her stiffness, disappeared.

She tells me that since the period in which she was taking them routinely, she now takes them intermittently when she has a pain or an ache here and there.

When I tried to get an evaluation of how much better she was, I asked her about her activities. She told me that her husband is a superintendent of a building, and for the last year she has been able to help him with his duties. She said prior to that—by that I mean from the onset of the arthritis until taking Imdrin—she was unable to help him.

Now, my examination of her was as follows: When I examined her joints, I found good motion at all the
1030 joints with the exception of joint movement of the hands. And by that I mean, at the distal interphalangeal joints.

Q. Where would that be, the joints closest to the tips of the fingers?

A. The last joint of the fingers. There was a little limitation of motion there.

The other joints had good and free motion. There was no crepitus of any of the joints.

I fluoroscoped her hands and her shoulder joints. On fluoroscopy I saw no osteophytes about the distal joints of her fingers.

When I fluoroscoped her shoulder, I did not see any changes there that showed any bony involvment.

Q. Doctor, what does fluoroscopy involve; exactly what is it?

A. Fluoroscopy is a hurried substitute for X-ray. It is so much similar and simpler, and so much more economical than the use of X-ray, that for many routine situations we use it. We use it ordinarily in the office, primarly as internists. We use it for an examination of the heart and lungs. But where bone is not overlaid with lots of tissue, then we can get a good, a fairly good picture of the bone.

Now, in the hands which are thin, it is quite good.

Q. Would you say equally as effective as X-rays?

1031 A. No; it is not.

Q. Does that complete both the history and the physical examination that you put this lady through?

A. Yes.

Q. Now, Doctor, on the basis of—

A. Oh, excuse me.

Q. Go ahead.

A. I did examine—in the two patients, Mrs. Raaberg and Mrs. Marchena, I did examine their hearts because I wanted to be reasonably certain that they were not having

acute rheumatic fever at the time of these arthritic manifestations. And my examination leads me to believe that they do not have that type of rheumatism.

Q. Doctor, based on the history that you took of Mrs. Marchena, and your physical examination of her, are you in a position to render an opinion as to what her condition was at the time of her pains and aches?

A. It is my impression that she probably had a condition which we call a degenerative arthritis. I would say that she probably had a very mild form.

Q. Is there some other term that is used, synonymous with degenerative arthritis?

A. It is called degenerative. When there is marked bony involvement, it is called osteoarthritis.

In the past century, when there was a lot of de-
1032 formity of bone—a lot of deformity due to the changes in the bone, it was called arthritis deformans of which there later were, they split out two different groups.

When it occurs in various areas, it gets special names. It is usually, with the exception of the hands, it is more apt to occur in the large joints of the body, in the so-called weight-bearing joints. It occurs primarily in the knees, in the hips, and in the spine. When the hips are involved, it gets a special name. But it is probably not a special disease.

Q. What is the generic term for all of this that you have been discussing? Is it osteo, or is the other?

A. The thing I am talking about, I am talking about osteo or degenerative arthritis.

Q. So your ultimate diagnosis in this case was osteo or degenerative arthritis; is that right?

A. Yes. I would have labeled her as a case of mild degenerative arthritis.

Q. All right. I should like to direct your attention now to Mrs. Betty Raaberg. Will you tell us when you saw her and where?

A. I saw her on June 26th, again in my office.

Q. Will you tell us, first, the medical history you took from her?

A. I had a little bit of language difficulty with her.
1033 Fortunately she had an interpreter with her, a friend. So I was able to get a little additional in that way. Her story went like this: She said that off and on, for the

last ten years she would have stiffness and pain of her fingers, her right shoulder, and her right knee.

Off and on in the past, she took aspirin. She was very indefinite as to whether she got relief from aspirin.

She had never consulted a physician about this. She made it a special point of pride to tell me that she had no use for physicians.

At one time her knee was quite bad. Her knee was swollen, she said, and she was unable to walk. She took Imdrin. I am sorry, I don't have the date of that, when she took it, but approximately a year and a half ago. She says she had some relief after two pills.

After two days of the medication, at the time when this joint was swollen and very painful, she said, for the first time in a number of days she was able to walk down the stairs.

She took one and a half bottles of Imdrin—I don't know how many tablets that is—and then she stopped it. Then she says that whenever she gets returning stiffness in her shoulders or in her hands, she takes Imdrin for a couple of days and, as she says, she always gets relief.

She has had no further trouble with her knee. She
1034 has had no trouble with her back. She said her knee was so severe that it was tender to touch, and she couldn't stand the pressure from blankets.

Now, I examined her, and the following are my findings: Again, she had some stiffness of her fingers. Now, in one or two of the fingers it was more striking; it was more severe than in the other fingers.

As people age they lose a certain amount of the mobility of their joints, and it is never really convincing unless the loss of motion is well marked, or it is limited to one finger or so.

Now, in her case there were two fingers, as I recall, where the limitation of motion was very, very definite. You could really be quite certain about it. She had had no crepitus of her shoulder or crepitus of her knee when I flexed her knee. However, as she was lying on the examining table, I pressed in the depression between her patella, which is the kneejoint, and the adjacent bone, there was definite crepitus there.

I did not X-ray her, but I would not be surprised to find that she may have had some calcification of the ligament between the patella and the adjacent bone.

Q. I am not sure, it is not entirely clear to me that for the record you have indicated specifically where this patella is. Will you say that please?

1035 A. The patella is what we call a sesmoid bone, which lies in front of the tibia; the tibia is the lower bone of the knee joint, and the femur is the upper bone. And this lies right in front of the tibia, the upper end of the tibia, and it is part of the joint.

Q. Did you fluoroscope this lady?

A. I fluoroscoped her hands and, as I say, on fluoroscopy of the hands, I saw no deformities of the bones. I am sorry, I made a mistake about Mrs. Marchena. Did I mention this—

Q. Yes, you fluoroscoped her you said.

A. Yes. But I want to correct my testimony. She did have a slight narrowing of the joint space of her—of the affected shoulder.

Q. You are referring now back to Mrs. Marchena?

A. Yes.

Q. And you found, you say, a narrow space?

A. A narrowing. Normally, when you fluoroscope these people, there is a space between the bones.

Q. Yes?

A. Now, those bones stay in a certain position because of ligaments that connect the bones to each other.

Q. What separates the bones?

A. What separates the bones?

Q. Yes.

1036 A. Well, there are, as I say, there are ligaments, and there is actually some fluid in the joint.

Q. I see.

A. My impression was that from fluoroscopy, that the shoulder that she had complained of, that the joint space was slightly narrowed.

Q. And would you attribute that to the degenerative arthritis?

A. I would say that in order for such a change to have occurred, she must have—I can't prove this, but it is my impression—that she must have some sort of a process of the ligament which has caused a shortening, a contracting of the ligament.

Q. What you are saying, then, is that that adds credence to your—

Mr. Callaway: Now, objection. That is purely leading.

Mr. Goding: I might say this, your Honor: we are in a rather technical area, and I am quite certain that your Honor is impressed with this witness's attempts to give his testimony as directly and clearly and honestly as he can. But for amplification, I thought that counsel would not object to what I think is a justifiable leading of the witness.

Mr. Callaway: But I am.

Trial Examiner Lipscomb: Let the witness an-
1037 swer this question and then let counsel abstain from asking leading questions.

Mr. Goding: All right. Would you just read that question back, please?

(The reporter read the question as follows:

"Question. What you are saying, then, is that that adds credence to your—")

By Mr. Goding:

Q. (Continuing.) —to your ultimate diagnosis of degenerative or osteoarthritis; is that right?

A. I would rather—if I may, can I phrase it this way?

Q. Yes, certainly.

A. I would say that this is a more objective finding. I would say that it gives credence to the organicity of the complaint. By that I mean: If some one were malingering and made up a story about pain in their shoulder, if you found nothing there, you couldn't tell whether they had something or they did not. The fact that there is a narrowing of this joint space, in my own mind, makes me think that there is a process going on there, that this is organic, that there is organicity to this woman's complaint.

Q. Did that complete your explanation?

A. Yes.

Q. And you don't care to say anything further about Mrs. Marchena?

1038 A. No.

Q. You will recall, now, that we were, or you were, talking about Mrs. Raaberg.

A. Yes.

Q. Do you remember where you left off?

A. Yes.

Q. All right. Will you resume then?

A. Yes, because that is what recalled it to me. I fluoroscoped her hands and I fluoroscoped her shoulders.

Q. We are back now to Mrs. Raaberg?
A. Yes.
Q. All right.
A. And I found nothing there on fluoroscopy. I am sorry to say that I did not X-ray her knee. I should have.
Q. Do I understand that in the case of Mrs. Raaberg, when you had her on the table, that you palpated the knee?
A. Yes. I palpated the knee, and then I flexed the knee. Because the ordinary type of crepitus which is a grating noise—
Q. Grating?
A. Grating. It is like a rusty hinge. The ordinary grating one gets is when one flexes, bends the knee at the joint. I could not elicit crepitus in that manner when I examined her. However, in all these people, whatever joint they complained of, I examined it by palpating it, and when I palpated her joint I was struck by this
1039 crepitus which I interpreted as arising from a particular location.
Q. Will you, for the record, explain—will you give us the meaning of palpate?
A. It means to feel.
Q. Now, doctor, does that complete the history that you took, and the examination that you made, of Mrs. Raaberg?
A. Yes, it does.
Q. Are you in a position, on the basis of both, to render an opinion as to what her condition was as of the time that she had these aches and pains, and as of the time that she took Imdrin?
A. Again, I feel that Mrs. Raaberg represents the same disease as the other lady. I think that if one has to quantitate the thing, I would say that she represents a little more advanced form of the disease.
Q. Mrs. Raaberg does?
A. Mrs. Raaberg, yes. Both of these diseases, when you compare them to some of the very severe forms that we occasionally see, these are—these you would have to put in the category of fairly mild forms.
Q. All right. You hadn't actually used the term here. It is degenerative or osteoarthritis; is that right?
A. Right.
Q. Now, I direct your attention, sir, to Mr. Robert
1040 S. Greenfield—

Mr. Goding: And I might make the statement for the record that this gentleman to whom I have just referred will be here offered as a witness tomorrow morning.

By Mr. Goding:

Q. Will you tell us first where and when you saw Mr. Greenfield?

A. I saw him on the 20th of June, again at my office. Now, he told a rather lengthy story about his trouble.

Q. First of all, so that there won't be any confusion or possible confusion of identity, what address, what was his home address that he gave you?

A. He gave me 94-05 222nd Street, Queens Village.

Q. All right.

A. He told me that in 1947 he began to have a pain on the lateral aspect of his left knee. That is the outside surface of his left knee. He said at first it would awaken him at night, and then later he started to have this pain, after he would be sitting in one position for a while. He found that he couldn't go to movies, he couldn't drive his car. He couldn't sit anywhere for any length of time. He had this, as he describes it, apparently very troublesome pains. The knee was never swollen, it was never red.

Q. This is the left knee you are talking about?

1041 A. Yes. There was stiffness of the knee, and there was pain that would shoot up and down his left leg.

Now, Mr. Greenfield made the medical rounds. He told me of at least five orthopedic medical men that he consulted, two of whom I know by reputation; the others I do not. The two that he mentioned are outstanding orthopedists.

A few, two or three of these orthopedists X-rayed him. They all took him on for therapy to treat him. They treated him in different ways: diathermy, various people gave him aspirin and so forth.

He was getting nowhere, and he was very much discouraged, and consequently he would go from one doctor to the next.

The last doctor he went to, or one of the last doctors he went to, prescribed massage and a steel brace for his leg. And he started to develop some atrophy around his knee and the masseur told him that he better get rid of the brace.

Then he went to another doctor who was not an ortho-

pedist—it is unclear to me just what he was—and he was told that his trouble was from his arches, and he wore—

Mr. Callaway: Wait a minute, I do object to him telling what the other doctor told the patient, according to what the patient told him. That is bringing the point a little bit too far.

Mr. Goding: I don't know that it is so terribly
1042 important one way or the other.

Mr. Callaway: Let's just leave it out, then.

Mr. Goding: All right. Except that you are going to interfere with the continuity of the history. It is not doing us any good, and it is not doing us any harm, also with respect to the Commission. It is just indefinite in the record.

By Mr. Goding:

Q. You might omit, Doctor, so that there won't be any breaking in on your statement, you might omit what the doctor said.

A. All right. Anyway, according to his story, he had various types of treatments. Late in 1948 or early 1949—he was unclear about that—apparently about a year and a half or so after the onset of this pain, he started to take Imdrin. He told me he took two tablets three times a day, and in 48 hours he had relief.

Now, my recollection was that he told me that he slept through that night after taking the medication for two days. He said that his relief was complete after 100 tablets.

After the first 100 tablets he took the drug less consistently; and he would take it sporadically. And after a total of four bottles, he stopped the drug completely.

He also told me, as he put it, he was so freer of
1043 pain that he was able to drive to Florida twice alone, in 1950—once in '50 and once in 1951.

Three to four months ago he developed left shoulder pain. He had pain, he said he was unable to play golf. He said the pain would awaken him at night.

He went to a physician. He told him he had bursitis, and X-ray therapy was prescribed and, he says, without success.

Two months later he started Imdrin, and after a few days of taking the drug, he was much improved.

My examination of the left leg was completely negative. When I examined his shoulder, there was crepitus there.

Q. Which shoulder was this, Doctor?

A. Left shoulder. And there was some—when I raised his arm about the horizontal—in other words, from this position upwards (indicating)—there was some resistance on his part, which I interpreted as his feeling of pain. When I fluoroscoped his shoulder, there was nothing to be seen there.

Now, he told me that at the time he had the Bursitis, that his shoulder had been X-rayed, and he had a calcium deposit—

Mr. Callaway: I object to that, because that really is getting into what somebody else told him. That is what another doctor told this witness, which this witness
1044 related to this doctor. That is just going too far.

Mr. Goding: We won't press that, your Honor.

By Mr. Goding:

Q. Will you omit the narration of the doctor to him in his recital?

A. All right.

Q. Will you take on from there.

A. I found nothing in his shoulder on fluoroscopy. When I examined his shoulder, he had crepitus, and there was a slight limitation, or hesitancy when I raised his arm above the horizontal, which I interpreted as his feeling discomfort.

The examination of the knee was completely negative.

Q. Will you explain what you mean by crepitus?

A. Again, it is a grating—sometimes you can hear it, sometimes you can't hear it. But you can feel it—it is a—

Q. Bones scraping against one another?

A. It is a creaking. It is a creaking noise or, as I say, sometimes you can't hear it, but you can feel it.

Q. What is it exactly, that causes this noise; that is what I want to get spread on the record?

A. Ordinarily it is due to—it is a grating of—it is due to the grating of bone against bone.

Well, it doesn't have to be bone, it can be calcium deposited, let's say, in a ligament or in a muscle, or a tendon, which is rubbing over another hard surface.

1045 Q. On the basis of the history that you took, and your examination of Mr. Greenfield, are you in a position, Doctor, to give us an opinion as to the condition that he had during both these occasions when he told you that he took Imdrin?

A. I am much more clear in my own mind about the second incident. I think that the man did have a bursitis.

Q. All right. Now, how about the first?

A. The first one, it is very unclear to me, as it was apparently unclear to these other physicians.

From the story, the location of the pain, it is my impression that it was not arthritis. It is my impression that it was some type of a neurotic condition.

Q. Isn't it true, Doctor, and having this in mind very clearly, I do not want to argue with you; you are my own witness—but isn't it a fact that neuritis is a form of—

Mr. Callaway: I want to—

Mr. Goding: I think I am entitled to complete my question.

Mr. Callaway: If he completes the question, it makes it a leading question, and the answer is suggested.

Mr. Goding: Oh, now, Mr. Callaway.

Mr. Callaway: Completion of a leading question really makes it where the objection is not worth while. And if you can catch a man before he completes a leading question, it can be stopped.

1046 Mr. Goding: May I go off the record?

Trial Examiner Lipscomb: Off the record.

(Discussion off the record.)

Trial Examiner Lipscomb: On the record.

Put your question to the witness.

Mr. Goding: Will you please read back as far as I got before the interruption?

(The reporter read the question as follows:

"Question. Isn't it true Doctor, and having this in mind very clearly, I do not want to argue with you; you are my own witness—but isn't it a fact that neuritis is a form of—")

Mr. Callaway: That could be nothing but a leading question.

Mr. Goding: Strike that, please; and I will start the question again.

By Mr. Goding:

Q. Doctor, is the generic term "arthritis", or does the generic term "arthritis" include within itself or by it, what is generally known as neuritis?

A. I would say not; I think this: Neuritis occurs very frequently in arthritic conditions. For example, one can

have a neuritis of one of the nerves between the ribs which can be caused by an arthritic condition in the spine.

There are other types of neuritis which have no
1047 relationship to arthritis.

Q. Well, Doctor, I refer you specifically to Mr. Greenfield's condition as of the time he first took Imdrin. You have diagnosed that as neuritis.

A. Yes. And I said that it was unclear in my mind as to what the cause of it was. I think he had a neuritis. Whether it was due to an arthritic process at his knee joint or not, I don't know.

Mr. Goding: I think that is all.

Trial Lipscomb: Off the record.

(Discussion off the record.)

Trial Examiner Lipscomb: On the record, gentlemen.

Cross-Examination by Mr. Callaway.

Q. Doctor, did you say in direct examination that you had some connection with the First Medical Division of New York City's Bellevue Hospital, or what did you say?

A. Yes.

Q. Who is in charge? Isn't Dr. Dickinson, Dr. Richards in charge of that?

A. That's right.

Q. And you work under him; is that correct?

A. He is the director of the service.

Q. Is not your connection there only as a consultant on questions involving blood?

1048 A. That's right.

Q. In other words you don't—you have nothing to do with treatment of arthritic and rheumatic patients there?

A. No.

Q. When you became a Diplomate of the American Board of Internal Medicine, that was, was it not, in the specialty of hematology that you became a Diplomate?

A. No. Can I—

Q. Wait just a minute. I am reading here for the professional qualifications, there are a number of them, and one of the qualifications is one year of approved residency in one of the medical specialties, and one of the medical specialties mentioned is hematology.

A. Right.

Q. That is what you had, your specialty in that; is that correct?

A. That's not completely correct.

Q. Your training, I believe, at Pratt Diagnostic Hospital in Boston, was largely work in blood diseases, wasn't it?

A. That is correct.

Q. You say it was correct?

A. It is correct.

Q. And your connection with the Michael Reese Hospital, was that in your specialty of blood diseases?

A. That was internal medicine.

1049 Q. You interned there, I believe?

A. Yes. I was there for two years.

Q. Now, then, isn't your affiliation with the Hospital for Joint Diseases in the role of consultant in blood questions?

A. It is not.

Q. Is not your practice limited to blood diseases, the specialty of hematology?

A. It is not.

Q. I believe you did state that all the papers that you have had published are in that field?

A. It is my special interest.

Q. Let's take Mrs. Marchena. You haven't told us how old Mrs. Marchena was. Did you elicit that information?

A. Yes. She is 65.

Q. 65?

A. Correct.

Q. You made a correction after you had testified first that there was nothing shown in the fluoroscope, then you later corrected that to say that it showed a slight narrowing of the joint space in the shoulder. I am wondering, were you testifying from memory when you left that out, or were you testifying from memory when you put that in, or do you have it in your notes there?

A. I don't think I have it in my notes.

1050 Q. You then didn't think it of sufficient importance to make a note of that; is that correct?

Mr. Goding: Isn't that argumentative, your Honor.

Trial Examiner Lipscomb: It is argumentative, I think.

By Mr. Callaway:

Q. Now, Doctor, isn't it true that under the fluoroscope you may see what appears to be a narrowing of the joint

spaces, whereas upon X-ray examination, taken from several different angles, it might show that there was no narrowing?

A. Conceivable; yes.

Q. Outside of your finding of narrowing of the joint space which you say you saw in the fluoroscope, was not your diagnosis based entirely on the history which this woman gave you?

Mr. Goding: Which one is this?

Mr. Callaway: Mrs. Marchena.

A. Yes.

Q. Now, Doctor, in your specialty of hematology, suppose a patient came to you showing paleness, would you make a diagnosis of anemia without testing the blood, just because the patient was pale, and from what she told you?

Mr. Goding: I object to that.

Trial Examiner Lipscomb: Read the question, Mr. Reporter, please.

1051 (The reporter read the question as follows:

"Question. Now, Doctor, in your specialty of hematology, suppose a patient came to you showing paleness, would you make a diagnosis of anemia without testing the blood, just because the patient was pale, and from what she told you?")

Mr. Goding: Even as an analogy that isn't so. It is so weirdly unrelated, that we just are not going to get anywhere.

Trial Examiner Lipscomb: The Doctor can dispose of the question then, very quickly. You can answer it, if you can.

A. Of course not. But—

By Mr. Callaway:

Q. Now, then, Doctor—

Mr. Goding: He said "but". Let him finish please.

Trial Examiner Lipscomb: Do you have anything you wish to add, Doctor?

The Witness: Yes. The situations are not analogous.

By Mr. Callaway:

Q. Well, now, outside of this slight narrowing of the joint spaces which you say could have failed to show up upon X-ray, your physical examination was entirely negative of Mrs. Marchena, was it not?

A. Right.

1052 Q. And she had no complaints at the time she came to you, did she?

A. That's right.

Q. Doctor, can you honestly say that, from a negative history from a patient who has no present complaints—I don't mean from a negative history—I mean from a negative examination of a patient who has no present complaints, and based solely on the history, that you can say what a person had a year ago?

Mr. Goding: I object to that. It is based upon a fallacy. The evidence here is that there was a possible history due as a result of the fluoroscopy.

Trial Examiner Lipscomb: I think the question is a good question. The objection is overruled. Doctor, you may answer the question. Read the question to him, Mr. Reporter.

(The reporter read the question as follows:

"Question: Doctor, can you honestly say that from a negative examination of a patient who has no present complaints, and based solely on the history, that you can say what a person had a year ago?")

Mr. Goding: If the tenor of that is as a general way, I have no objection; but if it is sought to be related directly with the diagnosis of Mrs. Marchena, then I press my objection.

Trial Examiner Lipscomb: Objection overruled.
1053 Answer the question Doctor, please.

A. By and large, if one takes the patient's story, and takes it as the truth, and one does not find purely objective findings—ordinarily, one can still have an impression as to what the disease process is. Now, the fact that she doesn't have complaints today, doesn't mean very much, because if I showed you a very advanced case in which every one would agree that this is osteoarthritis, on X-ray today, such a patient might say "I feel fine and have no complaints."

This disease, it is unfortunate, we do not know much about it. But it runs a very peculiar course. In other words, one day they feel well, the next day they don't feel so well.

The average patient will tell you that it bothers him, and will use the phrase, "off and on."

By Mr. Callaway:

Q. They have periods of remission; is that correct?

A. That's correct. Sometimes—

Q. Wait just a minute.

Mr. Goding: Let him complete his answer. Mr. Callaway, let's be fair about it.

A. Sometimes the knee, particularly in the knee, sometimes they don't really get complete remissions. They may be somewhat better on one day and worse the next. But in really advanced knee disease you don't get real, true remissions.

1054 By Mr. Callaway:

Q. But none of these folks, as I understand you to say, had advanced cases?

A. That's right.

Q. And in not advanced cases, you do not get remissions; right?

A. Correct.

Q. And do not at times those complete remissions last for months?

A. Correct.

Q. Now, Doctor, if Mrs. Marchena's history—if, in Mrs. Marchena's history she told you that she had no relief at all from aspirin, and no relief at all from Anacin, would that change the picture so far as your impression is concerned?

A. By and large, one expects a certain amount of relief from salicylates. The relief is dependent on a number of things: It is dependent upon how much aspirin they take. Very frequently patients will tell you they take aspirin for an arthritic condition, and when we question them, we find that they really haven't taken enough.

Q. Let me ask you this, then: The fact that she told you that she got some relief from aspirin, then, has some bearing on your diagnosis; is that correct?

1055 Mr. Goding: I object to that. I don't recall in the record that that was so stated.

Trial Examiner Lipscomb: I think that is a fair question.

Mr. Callaway: She said that.

Mr. Goding: I would like to know for a fact. Maybe I didn't just hear that.

Mr. Callaway: I put it down.

Mr. Goding: May we have what the Doctor said?

Mr. Callaway: Let's have it from the record, not from his notes.

Mr. Goding: If the reporter can find it.

Trial Examiner Lipscomb: The question is a fair question. Let's have the answer without going back into the record. I can't be too far afield.

Mr. Goding: May we go off the record? I think it is rather important.

Mr. Callaway: No; let's stay on the record on the proposition.

Mr. Goding: All right. To obviate the necessity of spending time asking the reporter to go back on the record, I think it would be very simple to ask this Doctor now as to what he has in his notes with regard to the results of this woman taking aspirin.

Mr. Callaway: You can ask him any of those questions you want to on redirect.

1056 Mr. Goding: I want it at this time for continuity purposes.

Trial Examiner Lipscomb: Objection is overruled. Doctor, will you answer the question?

The Witness: Yes. I remember specifically what I said, and what I said was exactly what I have here in the notes.

I said she took aspirin, and at first she got some relief. Later she became retractive. She took Anacin which helped for a while, and then she became retractive.

By Mr. Callaway:

Q. My question to you originally was: Did the fact that she got some temporary relief from aspirin and Anacin have any part in your diagnosis of the condition which you say you found?

A. It has a little weight, but aspirin helps so many things.

Q. Now, Doctor, would it change your mind at all if you knew that she stated here on the witness stand this morning that she got absolutely no relief from aspirin or Anacin?

Mr. Goding: Change his mind with regard to what?

Mr. Callaway: With regard to his diagnosis.

Mr. Goding: All right.

A. Not particularly.

By Mr. Callaway:

1057 Q. Would it change your mind any if you knew that she stated this morning that she had pains running from her shoulders clear down to her fingertips, and from her knees clear to her toes? I mean, when she had the complaint just prior to the time that she took the Imdrin?

A. No, that type of pain is compatible with such a diagnosis.

Q. Isn't that type of pain more nearly a nerve pain than an osteoarthritis pain? Aren't the nerves that run from the spinal cord—

Mr. Goding: Please, one question at a time. Let's not compound the confusion here.

Trial Examiner Lipscomb: Objection is well taken.

Mr. Goding: Will you read back that first completed question, so the doctor might answer it.

Mr. Callaway: I withdraw that question.

By Mr. Callaway:

Q. Now, Doctor, are there not nerves that run from the spinal cord on down to the fingertips; isn't that correct?

A. Right.

Q. And pain in the arm, I believe, as you said, may be referred from the spinal cord, may it not?

A. Right.

Q. And such a pain in the nerve referred from the spinal cord may be confused, may it not, in the mind of the patient with muscular pain?

1058 A. And in the mind of the doctor.

Q. So, if you knew that she had stated this morning that she had the muscular pains beginning at her shoulders and running clear to her fingertips, and beginning at her knees and running clear to her toes, would that have any bearing on your diagnosis?

A. Not really.

Q. Sir?

A. Not really.

Q. And your diagnosis I believe, is osteoarthritis; isn't it?

A. Yes.

Q. Could not those pains have reference to some other disease than osteoarthritis?

A. Yes, they could.

Q. The fact of the matter is, you haven't made a diagnosis of what she had; you just told us, I believe, that you have the impression that she had osteoarthritis; isn't that what you said?

A. That's right. I wouldn't stake my life on it.

Q. Sir?

A. I said you are right. I wouldn't stake my life on it.

Q. Mild osteoarthritis; is that correct?

A. That's right.

Q. And the pains of a mild osteoarthritis might
1059 resemble the pains of a number of other conditions, might they not?

A. That's right.

Q. In the examination of Mrs. Betty Raaberg, I believe, you there say also that you have an impression of a mild osteoarthritis?

A. Yes. I feel a little more certain about her because of the findings of the knee.

Q. Did you find out her age?

A. I have the year of her birth. 1885. So she is 66 approximately. She will be 66 on October 9th.

Q. You believe your X-ray findings were completely negative in her case?

A. I did not X-ray; I fluoroscoped her.

Q. I mean your fluoroscopic findings?

A. I fluoroscoped her hands and her shoulders.

Q. Now, Doctor, did you find any crepitus in Mrs. Raaberg?

A. No, I did not.

Q. I believe you said that the findings in her were more in the middle joint of the fingers, rather than the end joint, did you not?

A. Oh, no; the ends.

Mr. Goding: The ends. He made that very clear.

By Mr. Callaway:

Q. You did fluoroscope the fingers?

A. Yes.

1060 Q. Did you find this crepitus in her knee prior to the time that you fluoroscoped her fingers, or afterwards?

A. I examined her physically first, and fluoroscoped her last.

Q. What I am wondering is: Since you found some crepitus in the knee, why you did not fluoroscope that knee?

A. Why I didn't fluoroscope the knee?

Q. Yes.

A. Well, I will tell you; there are two reasons: First of all, I have never fluoroscoped a knee. I think that it is too thick. Secondly, the fluoroscope that we have in the office is primarily a chest fluoroscope, and when we drop the screen below a certain height, approximately this height (indicating), we get a buzzing noise, and there is something wrong, and we just don't lower the screen. We never have any real purpose in lowering the screen above the chest ordinarily. It is really a chest fluoroscope.

Q. Now, if you had had adequate facilities, and had fluoroscoped—

A. I would not have fluoroscoped her; I would have X-rayed.

Q. Well, X-rayed the knee?

A. Yes.

Q. And you found negative findings there, would that have any bearing on your impression as to what she had?

A. I would still be certain she still had crepitus.

1061 Q. I am talking about the mild form of osteo-arthritis.

A. In a diagnosis like this, one always feels more secure with the diagnosis when you get something objective. In other words, something I could show you, or 50 other people.

However, this disease, in its mildest form, just doesn't happen to be one of those diseases. It is not like anemia. You just can't measure it.

Q. Now, let's see; in its mildest form it is rather elusive to say whether or not one has it; is it not?

A. Except that these people's complaints fall into a certain pattern. In general—I am not talking about specific complaints—they talk pretty much about the same sort of complaints. These are people who have never been to doctors, and people who have been to doctors.

They complain of stiffness, they complain of pain, they find that when they get up in the morning, that they are particularly stiff. After a little time goes on, they find that they are able to have their joints moved a little more.

Q. Now, let me ask you this: A person of the age of these two women that we have talked about up to date, gets up in the morning and finds himself a little stiff, and has a little trouble moving his joints without having osteo-arthritis?

A. Well, that is a question. It is such a prevalent disease, that it may be that maybe every one at 65 or 70
1062 does have a little arthritis.

Q. Is that what you are saying?

A. Is that what I said?

Q. Is that what you are saying, that every one—

A. No, it may be.

Mr. Goding: Don't put words in his mouth.

Q. Are you saying that every one who gets up in the morning, aged from 65 to 70, and who had a little stiffness in his joints, has osteoarthritis?

A. No.

Mr. Goding: Haven't we just had that question answered?

Trial Examiner Lipscomb: I think we have had the question answered.

Mr. Callaway: I don't think we got an answer, though.

Trial Examiner Lipscomb: The Doctor said it might be.

The Witness: May I answer it in another way?

Trial Examiner Lipscomb: You may answer it in another way, Doctor.

The Witness: A person who gets up in the morning and feels stiff, whether he is three years old or ninety, he feels stiff for some reason. Now, whether the reason is obvious to us or not, is something else again. But there is a reason for it. These things just don't happen out of
1063 the blue. Now, this sort of thing is frequent in old people, and osteoarthritis is also frequent in old people. Whether this is a cause and effect or not, I don't know, and I don't know that anybody knows.

By Mr. Callaway:

Q. I understand you to say that the stiffness in the fingers was never convincing unless loss of motion is remarkable; didn't you say something like that?

A. Well, not remarkable.

Q. Very noticeable at least?

A. Yes.

Q. And I believe you said that, in regard to the crepitus, there is one method that you usually test for crepitus, and you didn't find any crepitus according to that method, did you?

A. Well, that method, what it does, as I understand it, is, in the knee joints, where you have these two bones resting on one another, if you have osteophytes, which may

grate or lock against each other, then you will get crepitus when you flex the joint.

But if you have calcification of a ligament overlying the joint, you may get it too.

But I didn't get it on flexion of her knee. I got it on pressure, palpation.

Q. Is that convincing when you don't get it the
1064 first method that you talked about?

A. I am convinced that she is not a severe case.

Q. Sir?

A. I say, I am convinced that she is not a severe case.

Q. If it had been at all a severe case, you would have found it in the crepitus in the first method?

A. If her knees were involved. The very severe cases would show it.

Q. And could the condition which you find on the second kind of test you made of the knee, be the result of anything else other than osteoarthritis?

A. That is not—I can't give a clear cut answer to that, because—

Q. Are you clear on it yourself?

Mr. Goding: Let him finish his answer, please.

A. The reason I can't give you a clear cut answer is because I am unclear in my own mind. Sometimes patients develop arthritis, for example, following a trauma, injury to a joint.

Now, of course, the knee is an area which could be injured easily, and many injuries occur to people, and they have no knowledge of it. Now, whether this is something that follows a trauma, an injury to a knee or not, I don't know. But it produces something which, in the wide use of the word "arthritis" would fall into the category of ar-

thritis. I mean, I can't define "arthritis" for you,
1065 and I don't know of anybody who can.

Q. In other words, if you define "arthritis" as somebody who has vague muscular and joint aches and pains, you are safe in saying that the parties had arthritis based on their history; is that about right?

A. That's not it, exactly.

Q. Pretty close, isn't it?

A. It is a term that is kicked around a great deal, even by doctors. And it may well be that the lay term "rheumatism" is a better term.

Q. You don't do much X-ray of the joints, then?

A. Occasionally. We don't do very much; no. We will do a little in the office, but in a very critical problem, we would send it out to an X-ray man. We don't consider ourselves X-ray specialists except in one particular field.

Q. Do you consider yourself an arthritis specialist?

A. No.

Q. Sir?

A. No, sir.

Q. I believe you said with Mr. Greenfield that you could hardly state that you had a clear impression of any kind of arthritic involvement from the first complaint, that is, the one—

Mr. Goding: When you first used Imdrin.

Q. Yes, trouble with his legs?

1066 A. Yes. It is my impression that it is not an arthritic situation.

Q. Now, then—by the way, how old was Mr. Greenfield?

A. He is just 52.

Q. This crepitus which you found in Mr. Greenfield's left shoulder—by the way, how heavy is Mr. Greenfield?

A. I am sorry to say I don't have his weight. I have the weights on the other two patients. But my impression is that he is much over-weight.

Q. Give us the weight on the other two patients?

A. Mrs. Raaberg weighed 172. And this is not stripped. Mrs. Marchena weighed 146.

Mr. Greenfield, I don't know why I don't have his weight, but I don't. He is heavy, though.

Q. That is usually part of the physical examination, isn't it?

A. Yes, it is. And ordinarily this doesn't happen to me.

Q. The fact of the matter, Doctor, is you didn't examine these patients with the same care you would if they had been patients of yours, coming to you for treatment, did you?

A. That's true, with a qualification.

Mr. Goding: What is the qualification?

The Witness: For example, I did not examine their throat and their sinuses. I only examined the chest, the heart and lungs of one of the patients.

1067 The care that I took to examine their joints, the care I took is much more than I take on a routine examination unless some one complains specifically of trouble.

Q. Did you test the reflexes?
A. Did I test the reflexes?
Q. Yes.
A. I did not consider it indicated.
Q. Isn't the adequate functioning of the joint then dependent upon the nerve supply?
A. Of course it is.
Q. So would not testing of the reflexes be part of an examination of a joint?
A. On Mr. Greenfield, I did test his reflexes, his knee joints.
Q. Might not a patient have syphilis of the spinal cord, and never be picked up on the kind of an examination you gave, unless you tested the reflexes?
A. Well, I will tell you; syphilis of the spinal cord ordinarily gives you some of the most terrible looking joints you have ever seen, but just a moment, there are usually painless joints.
Q. And this Mr. Greenfield didn't have any pains in his joint at the time you examined him, did he?
A. No, he did not.
Q. And that is why it would be important to test
1068 the reflex, and you said you did test his reflex?
A. I did test his reflex?
Q. I believe you said the only one whose reflexes you did test, if I understand you?
A. That's right. It struck me as being indicated.
Mr. Callaway: That is all.
Trial Examiner Lipscomb: You are excused, Doctor, thank you very much.
(Witness excused.)
Trial Examiner Lipscomb: Off the record.
(Discussion off the record.)
Trial Examiner Lipscomb: On the record.
Mr. Goding: If it please the Trial Examiner, I have already prepared, for the presentation of a witness, one Robert S. Greenfield, of 94-05 222nd Street, Queens Village, New York, concerning whom Dr. Miller has just testified. It is understanding—and I would like a statement from counsel when I have completed this statement—that it may be agreed that Mr. Greenfield would testify tomorrow morning stating the history which he gave to Dr. Miller, and which Dr. Miller testified to here just now, including his aches and pains and conditions, the time and manner

and use of Imdrin and the description of his condition thereafter.

Mr. Callaway: In answer to that, I am willing to
1069 agree solely for the purpose of concluding this hearing, that Mr. Greenfield would testify substantially the same as Dr. Miller says Mr. Greenfield told him.

Trial Examiner Lipscomb: It is the interpretation of the Trial Examiner that the counsel are in substantial agreement and the stipulation so stated is approved.

Mr. Goding: With that agreement, your Honor, I am very happy to say that the respondents now rest.

Trial Examiner Lipscomb: Respondents having rested, does the attorney supporting the Complaint have anything further to offer?

Mr. Callaway: Yes, sir. I would like to ask hearings for the taking of rebuttal evidence in Buffalo, New York, on July 24th and in Ann Arbor, Michigan on July 26th.

Trial Examiner Lipscomb: Will the holding of the two hearings requested complete the rebuttal on the part of the attorney supporting the Complaint?

Mr. Callaway: Your Honor, that is my present feeling. However, I would not want to bind myself to that irrevocably. But that is my present intention.

Trial Examiner Lipscomb: Are the suggested dates agreeable to counsel for the respondent?

Mr. Goding: Yes.

Trial Examiner Lipscomb: Then the requested dates
1070 are set, a hearing to be held on behalf of the attorney supporting the Complaint at Buffalo, New York, on July 24th, and at Ann Arbor, Michigan, on July 26th.

Notice will be given to counsel as to the exact place in those two cities at which the hearing will be held, and the exact time at which the hearing will begin.

Is there any further business to come before this hearing?

(No response.)

Trial Examiner Lipscomb: There being no further business, the hearing is adjourned to reconvene on the 24th of July, at the place just stated.

(Whereupon, at 4:10 p. m., June 27, 1951, the hearing in the above entitled matter was adjourned.)

1071

Civil Service Room,
Post Office Building,
Ann Arbor, Michigan,
September 18, 1951.

Met, pursuant to adjournment, at 10:00 o'clock a. m.

Before:

Abner E. Lipscomb, Trial Examiner.

Appearances:

Joseph Callaway, Attorney for the Federal Trade Commission.

Edward Brodkey, Attorney for the Respondents.

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PROCEEDINGS.

Trial Examiner Lipscomb: The hearing will come to order.

Will you call your first witness, Mr. Callaway?

Mr. Callaway: Dr. Robinson.

WILLIAM DODD ROBINSON was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

Direct Examination by Mr. Callaway.

Q. Your full name, I believe, is William Dodd Robinson?

A. That is correct.

Q. Are you a medical doctor?

A. Yes.

Q. Where do you live, Doctor?

A. I live in Ann Arbor, 1611 Wells Street, Ann Arbor, Michigan.

Q. What is your present occupation and the position that you now hold?

A. I am an Associate Professor of internal medicine in charge of the Rackham Arthritis Research Unit at the University of Michigan Medical School.

Q. Is that full time work you are doing there, Doctor?

A. Yes, it is.

Doctor, the qualifications of an expert witness have
1073 a good deal of bearing upon the weight to be given to his testimony. You will be offered here today as an expert witness. I wish you would therefore give us something of your qualifications, starting out with the degrees which you hold and when and where they were received.

A. I received my AB degree from Albion College in Michigan in 1931; my MD degree from the Michigan University Medical School in 1934. I then had a year of rotating interneship in the University Hospital followed by three years successively as Assistant Resident, Resident and Instructor in the Department of Medicine in the University Hospital.

Q. That is here in Ann Arbor, the University of Michigan Hospital?

A. Yes. That takes a period from 1934 to 1938. I then spent two years as Research Fellow here at the University Hospital in the Department of Medicine. Following that, for a period of three and a half years. I was associated with the International Health Division of the Rockerfeller Foundation, first as a special fellow working at Vanderbilt University in Nashville, Tennessee, and later as a member of their commission to Europe for work in Spain during the summer of 1941, and later as a member of their field staff working in Mexico. I returned to Nashville, Tennessee, as instructor of medicine at the Vanderbilt University in 1943. In 1944, I returned to the
1074 University of Michigan and my present position. I was appointed as an Assistant Professor in internal medicine put in charge of arthritis research units, and in 1946, I was appointed Associate Professor in internal medicine. That is a summary of my education and experience.

Q. Hospital and medical college appointments are included in what you have given, I believe?

A. That is correct.

Q. Now, Doctor, do you have a clinic at the medical school of the University, an arthritis clinic?

A. There is no distinctly separate arthritis clinic at the University Hospital primarily because of limitations of space. The arthritis research unit functions in taking care of patients with a variety of forms of rheumatic disease, but does not take every patient with arthritis

who comes to the University Hospital. Our staff also furnishes consultation service to the other departments of the University Hospital with respect to these problems.

Q. Doctor, do you participate in seminars and symposiums on diseases of internal medicine?

A. Yes, and particularly with respect to rheumatic disease.

Q. Rheumatic diseases, of course, comes under the heading of internal medicine, do they not?

A. Yes. I conduct the undergraduate lectures in both arthritis and rheumatic diseases. We have a one-
1075 week intermural postgraduate course for physicians particularly here in this state, on the subject of rheumatic diseases, which is my direct responsibility. In addition to that, there is a good deal of informal bedside teaching and extramural teaching activity at the postgraduate level, that is, giving talks at the County Medical Societies and so forth.

Q. Have some of these talks been published or abstracted and published, Doctor?

A. Yes. Should we go into the matter of those publications at the present time?

Q. Well, I will get that a little bit later. These talks that have been given on the subject of arthritis at the seminars and symposiums, have at least some of them been published?

A. That is particularly true of reports of investigative work at scientific meetings in contrast with strictly teaching talks.

Q. Now, by rheumatic diseases, I presume you also include all kinds of arthritis, do you not?

A. Yes. Rheumatic disease is a term which includes arthritis where the joint itself is affected, and also nonarticular rheumatism where the difficulty is not in the joint proper, but in the tissues around the joint.

Q. Did you say whether or not you instructed med-
1076 ical students in the field of arthritis?

A. I do.

Q. Doctor, of what scientific societies are you a member?

A. They are honorary scientific societies connected with the University, particularly Alpha Omega Alpha, Sigma Xi, honorary medical scientific fraternities; the American Medical Association, and the Michigan State Medical So-

ciety, and of course, the Washtenau County Medical Society. More or less in the field of internal medicine, I am certified by the American Board of Internal Medicine and I am a fellow of the American College of Physicians.

With respect to investigative societies or societies of investigative medicine, the Central Society for Clinical Research, the American Federation for Clinical Investigation, the American Rheumatism Association, and the Michigan Rheumatism Society, of which I am President the current year.

Q. Now, Doctor, I believe you mentioned that you were a member of the American Rheumatism Association. Have you had any connection with the committee for survey of research on rheumatic diseases of the National Research Council?

A. I serve as a member of that committee.

Q. What is the National Research Council? I mean just connect it up with the picture for us of the work you did.

1077 A. Well, the National Research Council—I am not sure whether it is to some extent a Government agency—serves to a certain extent as a clearing house for scientific information and for obtaining a means by which information can be obtained. In this respect, the National Research Council was requested to set up a committee to ascertain the present situation, the needs with respect to research in rheumatic diseases particularly, but also the situations where medical care in general was concerned. This committee consisted of twelve or fourteen individuals and they met in Washington on three occasions, was divided into sub-committees, met a little more frequently, and briefly, attempted to get factual information that is available on what the problem of what rheumatic disease is, where are the gaps in our knowledge from a scientific point of view; what facilities there are to bring to bear on these problems particularly from a research point of view, but also for utilization, more adequate utilization of what we have at the present time to combat these diseases.

Q. Are you also a member of the Sub-Committee on Research of the Medical Advisory Council of the Arthritis and Rheumatism Foundation?

That is correct. The Arthritis and Rheumatism
1078 Foundation is a voluntary public health organization

consisting of laymen and medical people interested in furthering research and approving the facilities for treatment of rheumatic diseases.

Q. Doctor, in the hospital and clinics which you attend, have you seen and treated many patients suffering with osteo-arthritis?

A. Yes.

Q. Rheumatoid arthritis?

A. Yes.

Q. Infectious arthritis?

A. Yes.

Q. Gout?

A. Yes.

Q. And other rheumatic diseases including fibrositis, neuralgia, neuritis—

A. I would not include neuritis and neuralgia as rheumatic diseases, sir.

Q. But outside of that—

A. Outside of that, yes. I have seen patients with neuritis and neuralgia, but I do not include them in rheumatic diseases.

Q. In other words, you are objecting more to my classification of those two in your answer to that?

A. That is correct.

Q. Doctor, have you in your hospital connections
1079 and clinics which you have attended followed the course of these various diseases and disorders including complications?

A. Yes.

Q. And you have had occasion, as I take it from the various appointments which I understood you to say that you have had, on occasion to conduct studies in research clinically—that is, in patients with rheumatic and arthritic conditions?

A. Yes.

Q. Doctor, are there any other local or scientific society meetings in which you participate other than which you have already mentioned, or have you covered that ground?

A. The meetings of the various organizations of which I am a member, essentially.

Q. Doctor, have you had any scientific papers or have you written and published any scientific papers?

A. Yes, I have. I have here a list of 35 publications

which I have authored or co-authored. A considerable number deal with the various aspects of nutritional deficiencies representing the field by field investigation prior to returning to the University of Michigan in 1934. However, there are a total of thirteen publications here covering the various aspects of arthritis and rheumatic diseases, and there are a considerable number of those publications in the process of preparation dealing with arthritis and rheumatic diseases.

1080 Mr. Callaway: May we go off the record?

Trial Examiner Lipscomb: Off the record.

(Discussion off the record.)

(At the request of Mr. Callaway, with the approval of Trial Examiner Lipscomb, the following is a list of publications by Dr. Robinson:

1. Horst, K., Robinson, W. D., Jenkins, W. L. and DJI-LIH BAO: The Effect of Caffeine, Coffee and Decaffeinated Coffee Upon Blood Pressure, Pulse Rate and Certain Motor Reactions of Normal Young Men. Jour. of Phar. and Exper. Ther. 52: 307 (Nov. 1934).

2. Horst, E., Buxton, R. E. and Robinson, W. D.: The Effect of the Habitual Use of Coffee or Decaffeinated Coffee Upon Blood Pressure and Certain Motor Reactions of Normal Young Men. Jour. of Phar. and Exper. Ther. 52: 322 (Nov. 1934).

3. Sheldon, J. M. and Robinson, W. D.: Subcutaneous Emphysema in Asthma. Jour. of Amer. Med. Assn. 107: 1884-85 (Dec. 1936).

4. Melnick, D., Field, H. Jr., and Robinson, W. D.: A Quantitative Chemical Study of the Urinary Excretion of Thiamine by Normal Individuals. Jour. of Nutrition 18: 693 (Dec. 1939).

5. Robinson, W. D., Melnick, D. and Field, H. Jr.: Urinary Excretion of Thiamin in Clinical Cases and
1081 the Value of Such Analyses in the Diagnosis of Thiamin Deficiency. Jour. of Clin. Inves. 19: 399-408 (Mar. 1940).

6. Robinson, W. D., Melnick, D. and Field, H., Jr.: Correlation Between the Concentration of Bisulphite Binding Substances in the Blood and the Urinary Thiamin Excretion. Jour. of Clin. Inves. 19: 483-88 (May 1940).

7. Field, H., Jr., Parnall, D., Jr. and Robinson, W. D.: Pellagra in the Average Population of the Northern States, New Eng. Jour. of Med. 223: 307-15 (1940).

8. Field, H., Jr. Robinson, W. D.: The Absence of Reactions Following Therapeutic Doses of Nicotinic Acid Amido. Amer. Jour. of Med. Sci. 199: 273-76 (Feb. 1940).
9. Field, H., Jr., Robinson, W. D. and Melnick, D.: Vitamin in Peptic Ulcer. Ann. of Int. Med. 14: 578 (Oct. 1940).
10. Melnick, D., Robinson, W. D. and Field, H., Jr.: Fate of Thiamine in the Digestive Secretions. Jour. of Bio. Chem. 136: 49 (Mar. 1941).
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12. Melnick, D., Robinson, W. D. and Field, H., Jr.: Urinary Excretion of Nicotinic Acid and Its Derivatives by Normal Individuals. Jour. of Bio. Chem. 136: 145 (Oct. 1940).
1082 13. Melnick, D., Robinson, W. D. and Field, H., Jr.: Factors Affecting the Concentration and Distribution of Nicotinic Acid in the Blood. Jour. of Bio. Chem. 136: 157 (Oct. 1940).
14. Field, H., Jr., Melnick, D., Robinson, W. D. and Wilkinson, C. F. Jr.: Studies on the Chemical Diagnosis of Pellagra. Jour. of Clin. Inves. 20: 379-86 (July 1941).
15. Robinson, W. D., Janney, J. H. and Grande, F.: Studies of the Physical Characteristics of Selected Children in Madrid, Spain, in 1941. Jour. of Ped. 20: 723-39 (June 1942).
16. Robinson, W. D., Janney, J. H. and Grande, F.: An Evaluation of the Nutritional Status of a Population Group in Madrid, Spain, During the Summer of 1941. Jour. of Nutrition 24: 557 (Dec. 1942).
17. Youmans, J. B., Patton, E. W., Robinson, W. D. and Kern, R.: An Analysis of Corneal Vascularization as Found in a Survey of Nutrition. Transactions of Assn. of Amer. Physicians 57: 49 (1942).
18. Robinson, W., Payne, G. C. and Calvo, J.: A study of the Nutritional Status of a Population Group in Mexico City. Jour. of Amer. Dietetic Assn. (May 1944).
19. Steinkamp, R. C., Robinson, W. D. and Kaser, M. M.: Adaptation of Short Method of Calculating
1083 the Nutritive Content of Diets in Rural Areas of Middle Tennessee. Jour. of Amer. Dietetic Assn. 21: (Sept.-Oct. 1945) 522-26.

20. Chapter IX, Undernutrition (with L. H. Newburgh) in: Duncan's Diseases of Metabolism, 2d ed. Philadelphia: W. B. Saunders Company, 1947.

21. Nutritional Status During Pregnancy and After Delivery of a Group of Women in Mexico City (with R. K. Anderson, J. Calvo, W. D. Robinson, and G. C. Payne). Journ. Amer. Dietetic Assn. 22 (1946): 588-93.

22. A Comparison of the Calculated and Determined Calorie and Vitamin Contents of Mixed Diets: Margaret M. Kaser, Ruth C. Steinkamp, W. D. Robinson, E. White Patton and John B. Youmans. The American Journ. of Hygiene, Vol. 46, No. 3, 297-325, Nov. 1947.

23. The Diagnosis and Management of Acute Arthritis. Amer. Pract. 1 (1947): 285-91.

24. Metabolism, Toxicity and Manner of Action of Gold Compounds in the Treatment of Arthritis. VIII. The effect of BAL and Other Thiol Compounds in Preventing the Inhibition of Oxygen Consumption of Rat Tissues Produced by Gold Salts. Walter D. Block, Naomi C. Geib, and W. D. Robinson. Journ. Lab. and Clin. Med. Vol. 33: 1381-1392, Nov. 1948.

25. Fulton, John K., Marcus, Stanley, and Robinson, W. D.: Hyaluronidase Inhibitors in Body Fluids in 1084 Normal and Disease States. Proc. Soc. Exper. Biol. and Med. 69: 258-262, 1948.

26. Robinson, W. D.: Nutrition and Arthritis. Nutrition Reviews, Vol. 7: No. 2. Feb., 1949.

27. The Ground Substance of the Mesenchyme and Hyaluronidase. Use of the Streptococcal Decapsulation Test as a Measure of Thermolabile Hyaluronidase in Serum. Fulton, J. K., Marcus, S., and Robinson, W. D. Bull. New York Acad. Sciences:

28. Wolfson, W. Q., Thompson, R. E., Robinson, W. D., Hunt, H. D., Cohn, C., Hayes, E. E., Levy R. C., Pearlman, S. L., Rubenstein, B. B., Wise, W. and Zitman I. Physiologic and Clinical Studies with Long-Acting Preparations of Pituitary Adrenocorticotrophic Hormone. Univ. Mich. Medical Bull. 16: 152-163, June, 1950.

29. Robinson, W. D. The Present Status of ACTH and Cortisone in the Practical Management of Rheumatoid Arthritis. Journal Mich. State Med. Soc. 49: 1045-1052, Sept. 1950.

30. Wolfson, W. Q., Hunt, H. D., Cohn, C., and Robinson, W. D. ACTH and Colchicine in the Clinical Treat-

ment of Acute Gouty Arthritis; Physiologic Considerations and Review of Therapeutic Results in Fifty-one Attacks. Journal Mich. State Med. Soc. 49: 1058-1064, Sept., 1950.

31. Robinson, W. D., Wolfson, W. Q., and Duff,
1085 I. F. The Significance of Sedimentation Rate Changes during ACTH Therapy. Proc. Second Clinical ACTH Conference, Vol. 2, pp. 549-561, The Blakiston Co., New York, 1951.

32. Wolfson, W. Q., Beierwaltis, W. H., Robinson, W. D., Duff, I. F., Jones, J. R., Knorpp, C. T., Siemienski, J. S., and Eya, M. Corticogenic Hypothyroidism; Its Incidence, Clinical Significance and Management During Prolonged Treatment with ACTH or Cortisone. Proc. Second Clinical ACTH Conference, Vol. 2, pp. 95-117, The Blakiston Co., New York, 1951.

33. Wolfson, W. Q., Thompson, R. E., Robinson, W. D., Duff, I. F., Cohn, C., Lewis, L. and Hunt, H. D. The Development, Evaluation and Clinical Uses of Long-Acting ACTH Preparations. Proc. Second Clinical ACTH Conference. Vol. 21: pp. 1-20. The Blakiston Co., New York, 1951.

34. Wolfson, W. Q., Robinson, W. D. and Duff, I. F. Inability of ACTH and Cortisone to Alter a Physiologic Human Sensitivity Regularly Abolished by Pregnancy. J. Mich. State Med. Soc. In Press.

35. Robinson, W. D., Conn, J. W., Glock, W. D., Louis, L. H. and Katz, J. Role of the Anterior Pituitary and Adrenal Cortex in Urate Metabolism and in Gout. Proc. Seventh International Congress on Rheumatic Diseases. Saunders and Co., Philadelphia. In Press.

Trial Examiner Lipscomb: On the record.

1086 By Mr. Callaway:

Q. Now, Doctor, I call your attention to the testimony of Dr. Weisberg appearing in this record on pages 575 to 641. Have you read that testimony?

A. I have.

Q. I also call your attention to the testimony of Dr. Black appearing on pages 642 to 671 of this record. Have you read that testimony?

A. Yes, I have.

Q. I call your attention particularly to the testimony on pages 579, lines 3 through 23, and on pages 617 and 618, beginning on line 16 on page 617 and running through

line 16 on page 618, and Dr. Black's testimony on page 646, lines 8 through 23.

Now, I would like to have your opinion in regard to whether there is any co-relation between the administration of salicylates and the reduction of redness, swelling and immobility of the joints in the various kinds of arthritis. In discussing this matter with you yesterday, I understood that you would prefer to deal with it in regard to the different classifications of arthritis, so I wish first that in answering this question, you would deal specifically with the cause of stiffness first in osteoarthritis.

A. In osteoarthritis, the symptoms of stiffness are
1087 apparently a result of a combination of two factors:

One is the pathology in the joint itself which is represented by a wearing away of cartilage and by a thickening of the bone around the margin of the joint. The symptoms are apparently related to the stress and strain particularly of the weight bearing on a joint which is vulnerable to that stress and strain, and the stiffness appears in osteoarthritis to be primarily related to this situation, the combination of the stress on the joint which is vulnerable because of the pathology which has occurred in the joint cartilage.

Q. Now, Doctor, do salicylates have any effect on these two factors that you have mentioned?

Mr. Brodkey: Just a moment. I don't know just where we are in this proceeding because first there was an attempt, I think by Mr. Callaway, to ask a quite general question, and then I was waiting for him to finish that so I might object to its indefiniteness. Then he asked Dr. Robinson a series of specific questions opening the gate to Dr. Robinson to sort of tell us about the joints and osteoarthritis generally, and then Mr. Callaway immediately follows that with a request that Dr. Robinson give us his opinion with respect to the effect of salicylates, or something to that effect, in any event, on any such condition without having laid any foundation for it at all, or

asking anything relating to any of the other condi-
1088 tions which might obtain, or anything of that nature.

I think his question is quite bad in form. I do not object to his exploring the area, but it seems to me he should adopt one course or the other, either let Dr. Robinson testify or else lead up as he should to a request for an opinion from this man, who is unquestionably an expert.

Mr. Callaway: I did start off—

Mr. Brodkey: I think you ought to ask him in the first place a simple question, if he can give you an opinion without anything more than what you have handed him. I think Dr. Robinson will say no.

Mr. Callaway: I would not be satisfied to have you frame my questions, Mr. Brodkey,—

Mr. Brodkey: Naturally.

Mr. Callaway: But I did start off with a general question, and as I related it, I went over this matter yesterday afternoon with Dr. Robinson and he did not want to deal with it as a general question. He wanted to deal with it according to classifications. So then I am asking and have asked him to deal with it first in the classification of osteoarthritis, and the question is directed to the effects of salicylates on the causes of stiffness in osteoarthritis.

He outlined first for us what the causes of stiffness were.

Then on the next question to which you object, I am
1089 asking him what is the effect of salicylates on these causes.

Mr. Brodkey: Will you ask him instead whether he has an opinion based upon the facts you have given him?

Mr. Callaway: I take it if he does not have an opinion, he would not attempt to give one.

By Mr. Callaway:

Q. The question, Dr. Robinson, is this: In your opinion, do salicylates have any effect on these factors which you have related as being, in your opinion, the cause of stiffness in osteoarthritis?

The Witness: May I answer that?

Trial Examiner Lipscomb: You may answer that, Doctor.

The Witness: Salicylates have no effect on the underlying pathology which makes the joint more vulnerable to stress. Salicylates obviously have no direct effect on the stress and strain as far as weight bearing is concerned, which is the most important factor in osteoarthritis.

By Mr. Callaway:

Q. Now, Doctor, next I wish you would deal with the cause of stiffness in rheumatoid arthritis. First, is ankylosis a cause of stiffness in rheumatoid arthritis?

A. Ankylosis, meaning fixation of the joint, is a
1090 cause of stiffness in rheumatoid arthritis.

Q. In your opinion, do salicylates affect stiffness due to ankylosis?

A. No, they cannot.

Q. Next, is muscle atrophy a case of stiffness in rheumatoid arthritis?

A. Muscle atrophy is, yes.

Q. Do salicylates affect stiffness due to muscle atrophy in rheumatoid arthritis?

A. No.

Q. Next, is swelling a cause of stiffness in rheumatoid arthritis?

A. Yes.

Q. Do salicylates affect stiffness due to swelling in rheumatoid arthritis?

A. They do not.

Q. Is inflammation a cause of stiffness in rheumatoid arthritis?

A. It is.

Q. Do salicylates affect stiffness due to inflammation in rheumatoid arthritis?

A. They do not.

Q. Now, I wish you also would discuss stiffness due to fibrositis. What are the causes of stiffness in fibrositis?

1091 A. In certain forms of fibrositis, the stiffness is due to inflammation and swelling, at least microscopic swelling at the tissue level. In other forms of fibrositis, the cause of stiffness is not known.

Q. Now, do salicylates affect the stiffness due to inflammation in fibrositis?

A. No.

Q. Do salicylates affect the stiffness in this other classification you said the cause of which is not known, in your opinion, I mean?

A. Yes. In my opinion, to a variable degree, but not in a dependable fashion and not in a fashion where they alone can be considered adequate treatment for stiffness.

Q. Now, Doctor, is swelling usually present in osteoarthritis?

A. Swelling in the sense of soft tissue swelling or accumulation of fluid in the joint is very unusual in osteoarthritis.

Q. When swelling is present in osteoarthritis, in your opinion, to what is it due?

A. It is due to excessive use or repeated damage to the joint more than it is capable of standing, usually associated with excessive weight bearing.

Q. In other words, do I understand you to say due to repeated trauma—that is, continued use of the joint that is vulnerable to this particular type—

1092 Mr. Brodkey: I am going to—

Mr. Callaway: I will withdraw that.

Mr. Brodkey: That isn't what the doctor said at all.

Mr. Callaway: Please read what the doctor said, Mr. Reporter.

(Answer read.)

By Mr. Callaway:

Q. In your opinion, do salicylates have any effect on this cause of swelling in osteoarthritis?

A. No.

Q. Doctor, is redness also usually present in osteoarthritis?

A. Virtually never.

Q. In the few instances that you said—virtually never—do I understand you to mean that there may be a few instances where it is present, or that you have never seen redness in osteoarthritis?

A. I have never seen redness in osteoarthritis which was due to the osteoarthritis.

Q. Now, Doctor, is swelling usually present in rheumatoid arthritis?

A. Yes.

Q. When swelling is present in rheumatoid arthritis, in your opinion, to what is it due?

1093 A. It is due to the inflammatory process.

Q. And in your opinion, how long will such swelling persist?

A. The swelling in rheumatoid arthritis will persist as long as the disease is active, as long as the inflammation persists.

Q. Do salicylates affect the underlying inflammatory process which you say causes swelling?

A. The salicylates do not affect the underlying inflammatory process in rheumatoid arthritis?

Q. Is swelling usually present, Doctor, in fibrositis?

A. In certain forms of fibrositis involving particularly bursa, tendon, tendon attachments, there may be swelling

either grossly apparent or at least microscopic—at the microscopic level.

Q. And what did I understand, in your opinion, is the cause of swelling in fibrositis? Was that included in the answer you have just given or not?

A. When swelling is apparent, it is due to inflammatory changes.

Q. Doctor, in your opinion, do salicylates affect the inflammation which gives rise to swelling in fibrositis?

A. No.

Q. Is redness usually present in rheumatoid arthritis?

A. It is not usually present. It may occur.

Q. When present, in your opinion, to what is it due?

1094 A. It is one of the manifestations of the inflammatory process.

Q. I believe you have stated that salicylates do not affect the underlying inflammatory process?

A. That's right.

Q. Would that same hold true in regard to fibrositis?

A. With respect to redness?

Q. Yes.

A. Redness is not particularly common in fibrositis, except perhaps some of the acute bursitis situation, where again it is due to the inflammatory process when it is present.

Q. And for which I believe you said that salicylates, in your opinion, have no effect?

A. On the inflammatory process, that is right.

Mr. Callaway: May we have about a five minute recess at this time?

Trial Examiner Lipscomb: We will take a recess.

(Short recess taken.)

Trial Examiner Lipscomb: On the record.

By Mr. Callaway:

Q. Doctor, is there stiffness, swelling and redness present in gout?

A. Yes. Gout is characterized by that.

Q. Is there any dependable co-relation between

1095 the administration of salicylates and the reduction of redness, stiffness and swelling in gout?

A. In gout, salicylates will occasionally have a transient and undependable effect on the pain, but no other effect on the swelling, redness and stiffness.

Q. Doctor, is there medication that does have a dependable effect upon stiffness, swelling and redness in gout?

A. Yes. We have a medication known as colchicine, which has been known since the time of the Greeks, which is very effective in the treatment of gout. More recently, of course, we have a hormone treatment, ACTH with which excellent results have been obtained in gout.

Q. Now, Doctor, next I want to call your attention to the testimony of Dr. Weisberg on page 633, beginning on line 3 and running through line 17. In your opinion and in your experience, is ankylosis comparatively rare in rheumatoid arthritis?

A. In my opinion, it is not comparatively rare.

Q. Doctor, I also want to call your attention to the testimony of Dr. Weisberg on pages 640 and 641, beginning on line 22 on page 640, and running through line 3 on page 641. Do you know, or if you do not know, what has been your experience as to the percentage of arthritic patients who are afflicted with rheumatoid arthritis?

A. There is no accurate figures on the percentage 1096 of all patients with rheumatic disease who have rheumatoid arthritis. The best estimate which has been made places a percentage at somewhere between 25 and 40 percent of all sufferers with rheumatic diseases.

Q. Doctor, in addition to the testimony of Dr. Weisberg on pages 575 running through 641, this same doctor testified on two other occasions, beginning on page 823 and running through page 844, and beginning on page 946 and running through 983—have you read this testimony?

A. Yes, I have.

Q. I call your particular attention to the testimony of Dr. Weisberg concerning an examination of Peter J. Maretta including the history and his diagnosis that Mr. Maretta had muscular rheumatism or fibrositis, his statement in this regard occurring on pages 824 and 825 and 826. I want to ask you, if in your opinion, from such examination and its negative findings, an accurate diagnosis can be made.

A. I do not feel that an accurate diagnosis can be made on the basis of the information contained in the record.

Q. Would an attempted diagnosis from this information be anything more than a guess in your opinion?

A. No. It would be nothing more than a guess.

Q. Doctor, I also call your attention particularly to the

testimony of Dr. Weisberg in regard to the examina-
1097 tion of King Hayes, including the history found on pages 831, 832 and 833. I want to ask you if, in your opinion, from such examination and its negative findings, an accurate diagnosis can be made.

A. On the basis of the information on the record, I do not think that an accurate diagnosis can be made.

Q. Next, I desire to call your attention particularly to the testimony of Dr. Weisberg concerning his examination of Rhoda Lipsie, including the history given him by her found on pages 826 and 827 of the record. In your opinion, can you say that her previous pain was due to hypertrophic arthritis?

A. On the basis of the information available in the record, it cannot definitely be said that her pain was due to hypertrophic arthritis.

Q. Next, Doctor, I call your attention to the statement of Dr. Weisberg that in the case of Mrs. Ida Klaus, he made a diagnosis of hypertrophic arthritis based on the fact that she was an elderly obese female who complained of previous pain in the knee, and on examination there was crepitus. This statement is made on page 829, lines 21 through 24. In your opinion, can an accurate diagnosis of hypertrophic arthritis be made from such history and examination?

A. On the basis of the information contained in the record, I do not think an accurate diagnosis can be made.

Q. I next call your attention to the testimony of
1098 Dr. Weisberg on pages 830 and 831 in regard to Mrs. I. Larson; that he felt strongly that the combination of her age, her obesity, the localization of pain in the right knee, crepitus in that knee, and the presence of Heberden's nodes established the diagnosis of hypertrophic arthritis. In your opinion, can an accurate diagnosis of hypertrophic arthritis in the knees be made from such examination and history?

A. I do not think an accurate diagnosis of hypertrophic arthritis of the knees can be made on the basis of the information in the record.

Q. Next, I call your attention particularly to the testimony of Dr. Weisberg with reference to Mr. Arthur Fremault found on page 839. I believe Dr. Weisberg stated there that on the basis of his history, age and the finding of crepitus, he made a diagnosis of hypertrophic arthritis. Doctor, in your opinion, can an accurate diagnosis be made

from such examination and history that his reported pains —that is, the pains he reported to Dr. Weisberg as having previously been had, were due to hypertrophic arthritis?

A. I do not think an adequate diagnosis with respect to cause of pain can be made on the basis of the information.

Q. Now, Doctor, in your opinion, would attributing Mr. Fremault's symptoms to hypertrophic arthritis be anything more than a guess?

1099 A. No.

Q. I next call your attention particularly to the testimony of Dr. Weisberg with reference to Mr. E. H. Carr found on pages 947 and 948, and the diagnosis of hypertrophic arthritis or subdeltoid bursitis, although there was no tenderness and no obvious limitation of motion at the time of the examination. In your opinion, can an accurate diagnosis be made from the history and such negative findings as there were in this case?

A. No.

Q. In your opinion, would such an attempted diagnosis be anything more than a guess?

A. It would not be anything more than a guess.

Q. Next, Doctor, I call your attention to the history, examination and diagnosis of Mrs. Ollie Mae Carr as related by Dr. Weisberg on pages 950, 951 and 952. In your opinion, can an accurate diagnosis of fibrositis or muscular rheumatism be made from such examination and history?

A. No.

Q. In your opinion would such an attempted diagnosis be anything more than a guess?

A. It would be nothing more than a guess.

Mr. Brodkey: At this point, if the Examiner please, this being repetition throughout, I am going to suggest that counsel be instructed not to lead the witness by the

1100 suggestion of terms. He is constantly referring to guesses, and the doctor does nothing but sees fit to agree with him when the suggestion is made.

Now, I think the doctor is competent to testify himself and should. That is my request.

Trial Examiner Lipscomb: Counsel will refrain from asking leading questions.

Mr. Callaway: I did not intend for them to be leading.

By Mr. Callaway:

Q. I next call your attention to the history and examination of Mrs. Kathryn Gott as related by Dr. Weisberg

on pages 953 and 954 of the record. In your opinion, would that history and examination enable a doctor to arrive at a diagnosis of any kind of arthritis, an accurate diagnosis?

A. You will note that Dr. Weisberg made a diagnosis of arthritis, type undetermined. In my opinion, the information is inadequate to permit a diagnosis of any type of arthritis, or to permit the conclusion that the difficulty could not be non-arthritic in nature.

Q. Now, Doctor, have you read the testimony of Dr. Lawrence H. Mayer in this case, found on pages 674 through 707?

A. Yes, I have.

Q. In your opinion, would a daily dosage of 400
1101 grains of aspirin be toxic?

A. It not only would be, it is very definitely toxic.

Q. I call your attention to Dr. Mayer's statement, lines 4 through 8 on page 696. Do you have any comment on that, Doctor?

A. The record is concerned with a statement that only 25 to 30 grains of aspirin can be absorbed at one time, the rest of it passing out in the stool, so that it doesn't matter how much you give by mouth, only a certain amount is absorbed. Modern investigation is in complete conflict with that statement. Salicylates are rapidly absorbed and the blood level is very definitely proportional to the dosage given up to a level of at least five times twenty-five or thirty grain doses that Dr. Mayer has referred to. Up to a level of at least 150 grains, to make it clear.

Q. Next, Doctor, I call your attention to Dr. Mayer's Statement on page 689 of the record, that over 50 percent of the cases of arthritis are due to syphilis, gonorrhea and tubercular infection. Do you agree with that statement?

A. I do not agree with the statement and I know of no data which would support that statement.

Q. I call your attention next, Doctor, to Dr. Mayer's statements on pages 689, 690, 693 and 694 as to the results obtained in the treatment of all kinds of arthritis with a preparation called Aciform No. 2. In your
1102 opinion, are such results probable, possible or impossible, or what is your comment on that?

A. I wouldn't say that such results are impossible because I have seen amazing things happen at the time that various medications have been used in isolated cases. But

the results described in the record are very highly improbable.

Q. I believe the composition of Aciform No. 2 is set forth in the record of Dr. Mayer's testimony?

A. Yes, it is.

Q. In your opinion, would a preparation of the composition of Aciform No. 2 be of any value for any kind of arthritis or rheumatism?

A. No.

Mr. Callaway: That is all, Doctor.

You may cross-examine, Mr. Brodkey.

Cross-Examination by Mr. Brodkey.

Q. Dr. Robinson, would you, for the purpose of the record, tell us as accurately as you can the circumstances under which you appear here today, at whose request and how that request was made.

A. I was contacted by Dr. Dobbs and Mr. Callaway I believe over a year ago. I don't recall the exact date. I was informed of the purpose of the hearings and I was sent a copy of—what do you call it?

1103 Mr. Callaway: The complaint?

The Witness: The complaint, and I indicated my willingness to testify in the hearing. Subsequently I had a conversation with Mr. Callaway and Dr. Dobbs, the exact date of which I have difficulty in placing. It was some time in the spring of this year. At that time, I looked over the records of the hearing. The proposed hearing or tentative date having been set sometime in July was postponed. Then approximately three or four weeks ago, I received word that the hearing had been tentatively set for this date and the official record of the proceedings again was supplied to me. Yesterday afternoon, Mr. Callaway, Mr. Dobbs and I went over various aspects of the material which we have covered this morning.

Q. Dr. Robinson, did you know either of these parties, Dr. Dobbs or Mr. Callaway previously?

A. No.

Q. Did they explain to you how it was that they came to make this request of you that you testify in this case? I am referring to you particularly.

A. I don't recall the exact words used. It is my impression that the request was for a person who was spend-

ing—they wanted an authority, an individual spending his full time in various aspects of rheumatic diseases.

Q. They had discovered that you answered that
1104 description, is that it?

A. I don't know how they got my name, obviously.

Q. Now, you volunteered a year ago to testify; is that it?

A. Yes. Of course, the word "voluntary" is—

Q. Would the word "agreed" be a better word? You agreed to testify?

A. Yes.

Q. And that was, of course, before any of the testimony here that you have now been shown and asked to comment on, isn't that right? This is more recent testimony than a year ago.

A. It is certainly more recent. It is certainly before some of the testimony, very definitely.

Q. So that at that time, you didn't have access to this testimony, did you?

A. No, I did not.

Q. You had made up your mind then to testify to much the same substance to which you are now testifying today; is that right?

A. My opinion and the facts as I see them have not changed.

Q. Well, they were formulated—

A. From a year ago.

Q. They were formulated as long ago as a year at least? Your opinion was formulated at least a year ago?

1105 A. My opinion with respect to the action of salicylates, for instance, had been formulated certainly well before that time.

Q. Yes. Now, are you being paid for your attendance here? There is no reflection on you, Doctor.

A. Yes. I have been told that I would be paid.

Q. You are familiar with the phrase commonly used in the vernacular, pride of authorship? I think we all know what that means, don't we?

A. Yes, sir.

Q. If a man writes a work or takes a position with respect to some particular matter, there is a disinclination ordinarily to deviate from it, isn't that true?

A. I think as a general statement, that is true.

Q. If your opinion was made up a year or more ago with respect to the effect of salicylates and attempts were made to persuade you today that that opinion was not a well founded opinion, what would be your attitude with respect to it?

A. That would depend on the evidence, the evidence submitted, in the sense that an opinion is always subject to modification as new evidence is obtained.

Q. You would not be reluctant to change your mind?

A. I have had occasion to change my mind on other things very frequently in the investigative field.

1106 Q. Do you know a product called Imdrin?

A. I am familiar with the name.

Q. Just the name?

A. And the advertising.

Q. And the advertising?

A. Yes.

Q. How long have you known the name?

A. I would say approximately—I would estimate it as two to three years. I am not sure.

Q. Do you know the formula of the product?

A. I know the constituents.

Q. Can you give us, from memory, a quantitative and qualitative formula?

A. I am not sure that I can. I know that it contains salicylates in the form of a manganese salt as well as the more common form. The other significant constituent is the succinate derivative.

Q. Have you ever had any experience in the use of this product or in prescribing it?

A. I have not prescribed Imdrin to any patient. I have had numerous patients describe to me the experience they have had with self-administered Imdrin.

Q. Now, apart from what they may have told you, you haven't prescribed it yourself, nor have you experi-

1107 mented with it yourself; is that right?

A. That is correct, with Imdrin.

Q. And you do know, of course, that there is something else besides the salicylates in the product?

A. Yes, I know that.

Q. It is a combination of ingredients, isn't it?

A. Yes.

Q. Various ingredients are combined?

A. Yes. It is a combination.

Q. Would all of your answers in the form of opinions which you have given here so far be the same if, instead of Mr. Callaway asking you whether there was an effect, in your opinion, to the use of salicylates in the instances he named, he had rather asked you if there was any effect to the product Imdrin consisting of salicylates and other things? Would your answers have been the same?

A. My answers would have been identical. They would be the same.

Q. Why?

A. Because the other constituents of Imdrin have been demonstrated to have no significant pharmacalogic effect in the conditions with which we are dealing.

Q. In other words—you weren't asked this on your direct examination—you feel there is no possibility
1108 that the succinates you mentioned might have some effect, either alone or in combination?

A. I know of no evidence indicating that the succinates have an effect.

Q. But it is possible, isn't it?

A. There is some evidence definitely indicating that there is no beneficial effect.

Q. Well, you haven't tried it anyway.

A. That is correct.

Q. Have you ever used a combination of drugs such as appear in Imdrin qualitatively or quantitatively, whether by that name or any other?

A. I do not recall having used a combination which approximates that used in Imdrin. I have used various types of salicylates which appear to be the active ingredients of Imdrin.

Q. The opinions which you have expressed heretofore have been based in part on your professional experience, and if I remember correctly, you testified that you had treated a number of patients; is that not true?

A. That is correct.

Q. Do you make use, in your practice, of salicylate therapy?

A. The use of salicylates is a portion of the treatment of various types of rheumatic disease.

Q. You do use it?

1109 A. Yes.

Q. Do you prescribe salicylates frequently?

A. Yes.

Q. In most of the cases that you treat? I don't know

how many there are because you said "many" but whatever number you had in mind?

A. In a majority of cases, salicylates are prescribed.

Q. When you say "are" I take it you are using the Germanic form and you mean "I do so," you yourself prescribe them?

A. That is correct, yes. Am I permitted to qualify my answers to these questions?

Trial Examiner Lipscomb: Definitely.

The Witness: I think it is only fair to emphasize that the use of salicylates is only a portion of the proper adequate treatment of a variety of types of arthritis.

By Mr. Brodkey:

Q. I think we know that, Doctor.

A. And no form of salicylates by themselves can be considered even coming close to adequate treatment of any form of arthritis.

Q. Another general question, Doctor: As to the opinions you have expressed here today, would they have been the same had you expressed them ten years ago?

A. No.

1110 Q. They would not?

Mr. Callaway: I don't know whether that is a proper question or not, a competent question or not.

Mr. Brodkey: I want to see about his opinion.

Mr. Callaway: He has given his record of studies and his record of achievements and the progress that he has made, connecting it up in point of time with the years. I think that is in itself an answer to the question counsel has asked.

In other words, this is a similar question to asking "Did you know as much ten years ago as you know now?"

Mr. Brodkey: That is exactly what I mean, Mr. Callaway, and I think the Doctor will say he didn't.

The Witness: Absolutely not. I would know as much. I would not answer the questions in the same way. There has been a tremendous advance of knowledge in the rheumatic disease field, and certainly as far as I personally am concerned, I have learned a great deal in the field of rheumatic disease in the last ten years.

By Mr. Brodkey:

Q. Had you been asked such questions ten years ago, would your answers have been as emphatic as they are today?

Mr. Callaway: I object to that question. What difference does it make? What bearing does that have on
1111 the issues in this case?

Mr. Brodkey: I want to see how sure he is of his opinions. He is a scientific man.

Trial Examiner Lipscomb: We will bear with the question.

The Witness: Well now, I find it difficult to answer that because I have testified, given an opinion in several respects. I have given an opinion on several aspects of several different problems, one dealing with an opinion with respect to the effect of salicylates in various forms of rheumatic disease. It is my opinion that my answers in that respect would not change substantially. There has been a vast amount of clinical experience, a vast amount of investigative work which has been done in respect to salicylates. Of course, it is possible that something will come up and change our ideas. But I think it is very unlikely with respect to the matter of salicylates. I have also given my opinion with respect to the matter of adequacy of diagnosis in a group of patients.

Mr. Brodkey: I will get to that adequacy of diagnosis in just a little while.

The Witness: My opinion in that respect I do not think would be changed ten years from now.

By Mr. Brodkey:

1112 Q. Ten years from now?

A. That is what you are asking me.

Q. Well, I want to know if you are pretty sure of your opinions today in view of what you have seen and in view of the way you must know you felt some years back.

A. Well, my opinions with respect to, for instance, several lines of investigation certainly are subject to revision, but opinions as to what constitute adequate diagnosis, adequate diagnostic procedure and opinion with respect to the facts as far as the incidence of certain types of arthritis and so on are concerned, those are not going to change.

Q. Now, Doctor, you undertook, early in your questioning today, to describe for us the difference between rheumatism and arthritis. Would you mind repeating that just as briefly as you can here?

A. Arthritis by definition is the disease process in which the joint itself is involved. Non-articular rheumatism may give rise to very similar symptoms, but it is due to changes

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which are not in the joint proper, but are in the muscles, ligaments, tendons and so on, or bursa around the joint.

Q. Well now, Dr. Robinson, would you say that everyone who specializes in your field agrees that that is a proper description, a proper definition, or is there a difference of opinion?

A. The best agreement, which has been obtained
1113 is the official classification of the American Rheumatism Association, and the division I have just given you in general follows that classification.

Q. You referred to your work, Doctor, in conjunction with other members of committees and sub-committees, the American Rheumatism Association, the National Research Council. You said that at somebody's request these studies were made; is that right? You used the word "request."

A. That is correct.

Q. Who did that request come from?

A. I am not certain whether it was the American Rheumatism Association or the Arthritis-Rheumatism Foundation which requested the National Research Council to make the survey. It was my impression that it was the American Rheumatism Association.

Q. There were other persons beside you on the committee, were there not?

A. There were.

Q. Approximately how many?

A. Approximately fifteen, fifteen to eighteen, I believe.

Q. In your deliberations, did you find yourselves always completely in accord?

Mr. Callaway: I want to know in accord on what?

By Mr. Brodkey:

1114 Q. With respect to the opinions you had on causation and effect and various things.

Mr. Callaway: First, I think we should determine whether or not those matters came up in these committees.

Mr. Brodkey: All right. Let us find that out.

By Mr. Brodkey:

Q. What did this committee do?

A. This committee sat down and in the first place tried to find out what was being done with respect to investigative work in rheumatic diseases; what was the situation as far as facilities for care of patients with rheumatic diseases were concerned, particularly arthritis.

Q. How was that accomplished? Did they exchange information?

A. That was accomplished to a certain extent by questionnaire method of all schools of medical research and institutes which might be carrying on such an investigation by obtaining from teaching hospitals the number of beds which they had available for treatment of patients with rheumatic disease, and by getting what information was available with respect to overall incidents and types of these particular diseases. There was very little disagreement of course—

Q. That is what I want you to tell me. You say there was liberal disagreement?

A. No. There was very little disagreement with
1115 respect to those which are essentially facts, and limitation is the method by which you get those facts. The only disagreement with respect to that is the adequacy of the method which is used to get those facts.

Now, there was very little or I should say relatively little discussion with respect to problems of causation and so on.

Q. What did you say about the problems of causation?

A. There was relatively little discussion in that respect. The discussions were concerned with three main groups of problems to evaluate research going on, and where there were opportunities for further study. Now, it was divided into three groups; one investigative work at the connective tissue level, at the level where the rheumatic disease occurred which is primarily a very technical procedure which brings in the physicists with their electronic microscopes and so on, and the refined techniques of the histo-chemists proved that the basic science people have very much to learn about the tissue where the disease occurred.

The second group is at the level of the individual concerned with clinical investigation of the disease process as it occurs in the human being and what we would term clinical investigation.

The third was at the level of society, the influence
1116 of rheumatic disease on society, and on society with the patient with rheumatic disease. Sub-committees were handling these three different spheres, and an attempt was made to get down in black and white what was being done, where the promising techniques, the promising possibilities were to expand our knowledge in those three divisions.

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Q. Do I understand you to mean that apart from your description of the procedures, there was no disagreement between you and your colleagues of equal stature on this committee?

A. There was relatively little disagreement with respect to the proposed—what appeared to be the promising areas of investigation.

Q. You mean as to what areas should be investigated?

A. That is correct.

Q. Was there any discussion of treatment?

A. Very little discussion of treatment.

Q. In other words, you can't tell me what the thesis of any individual member of that committee may have been, whether or not he agreed with your theses; isn't that right?

A. Theses with respect to what?

Q. What constitutes proper treatment for a given condition.

A. Not as a result of the meeting of this committee. However, I have had occasion to discuss—to visit the clinics of many men that were members of the com-
1117 mittee and they have had opportunity to visit our clinic. We have had very liberal interchange of views as far as many other matters that were not the proper business of this particular committee were concerned.

Q. Did you always find them in agreement with your views?

A. Not in every respect. I think with respect to the material which we have covered here, the majority of them have been in substantial agreement with the views that I have given, however.

Q. Are there a respectable minority that might not be?

A. Certainly.

Q. Would you say they were all necessarily wrong, that minority?

A. The thing that was most impressive in this interchange of ideas and visiting the—

Q. Doctor, I don't mean to interrupt you. Forgive me. But I should like an answer directly in the first instance, if you please. I would like you to answer the question as to whether or not you regard them as wrong for that reason?

Mr. Callaway: He is trying to pin this witness down to a yes or no answer and that sort of thing without qualification, and he is entitled to give as complete and full an

answer and to elaborate as much as he thinks necessary to make his position clear.

Mr. Brodkey: I do not mean to foreclose the wit-
1118 ness if he will also answer the question as directly as possible.

The Witness: I certainly do not think that all people with any difference in views from those I hold are necessarily wrong. I would like to state the thing that is most impressive with respect to the various people working intesively in the field of arthritis regardless of the particular type of medication which they may be studying most intensively at the time, or variations with respect to the routines they are following, that the common denominator in every place which I visited is excellent care of everything that bears on the patient's general health. A highly individualized approach to the treatment which appears, in my opinion, is the common denominator in the treatment of the rheumatic forms of arthritis by many of my colleagues and myself.

Q. Doctor, has it not been your observation that nearly all doctors use salicylate therapy in conditions such as have been described, or a very large preponderance, in any event?

A. They use salicylates as a portion of the treatment.

Q. Nearly all do so, do they not?

A. Yes. That is my opinion.

Q. I think you already testified, did you not, that the use of salicylates had an effect upon pain; is that correct?

A. I do not recall.

Q. Does the use of salicylates relieve pain?

1119 Mr. Callaway: Of course I think the record is perfectly clear on that, and this is not proper cross-examination.

Mr. Brodkey: Well, maybe this is preliminary to developing a point.

Trial Examiner Lipscomb: I do not believe anything like this was brought out on direct examination.

By Mr. Brodkey:

Q. Didn't you mention pain on direct examination, Doctor? That is my recollection.

A. I may have.

Mr. Callaway: I didn't ask him any question about pain.

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Mr. Brodkey: I believe you did, Mr. Callaway, and if so, I suggest that the Examiner admit the answers to this line of questioning subject to that objection if it is well taken. If I can't show you a place in the record where Mr. Callaway talked about pain, it may be stricken.

Trial Examiner Lipscomb: Proceed. I have no objection to this examination. I want you to be satisfied within reason.

By Mr. Brodkey:

Q. Does the use of salicylates have any effect upon pain generally?

1120 A. Yes.

Q. Does it in cases of rheumatism and arthritis, generally?

A. It gen ally has an effect on pain in rheumatism and arthritis, the degree of relief of pain varying with the type of arthritis, varying with the individual, and if you use "relief" in the sense of alleviation varying from slight change to complete relief, I would accept that. If you use "relief" in the sense of complete abolition of pain, I certainly would not. I would like to emphasize that there are some types of arthritis, rheumatic disease, in which the effect of salicylates on pain is unpredictable, and that I know of no form of rheumatic disease in which the use of salicylates alone can be considered adequate treatment.

Q. Doctor, is pain associated with a condition of inflammation you have described as encountered on various types of rheumatism and arthritis? Is pain associated with that inflammation?

A. Nearly always.

Q. In your opinion, would the use of salicylates tend to relieve that pain?

A. Would you care to specify the types of arthritis.

Q. Well, I was trying very hard, Doctor, not to have to go over the entire material in the interest of time which Mr. Callaway did, and ask you these questions with

1121 respect to each in turn, but if I have to go over it, I will. I think we can accomplish the same thing by sticking to a little more general field, however. Would your answers be different if I were to refer individually to each type of rheumatism and arthritis?

A. The effect of salicylates on the pain does vary with the type of arthritis. There is an effect, generally speaking, at all times. It is more consistent in some than in

others, and is much more predictable and usually much slighter.

Q. If I may focus your attention on inflammation as such, which I believe you said in your opinion could not be reduced by the use of these salicylates—that was your testimony, was it not?

A. Inflammation in specific disease entities.

Q. Which ones?

A. Inflammation is not an important part of osteo-arthritis, so we can leave that out, and rheumatoid arthritis, in various types of fibrositis and in gout, inflammation is associated with pain. The use of salicylates may alleviate the pain, but does not affect the inflammatory process in those conditions.

Q. Would the use of these salicylates, in your opinion, under those circumstances, permit the use of members which on account of pain one might be reluctant to use, a joint, for example, that man wouldn't move because it hurts him?

A. The use of salicylates under those circum-
1122 stances may permit increased mobility due to relief of pain.

Q. Doctor, can you state whether or not that would be generally desirable, to permit one to move a member which he wasn't moving because it was painful to him? In other words, in your opinion, is mobility good?

A. That again must be qualified, sir, because in general, mobility is certainly good.

Q. In general it is good?

A. Yes. There are certain—

Q. Why—

Mr. Callaway: Let him answer.

The Witness: There are circumstances where mobility is definitely harmful, and a great majority of the cases in which the matter of mobility should be regulated. That is, the use of the part should be regulated carefully over a period of time. I mean we have a whole gamut—a few up here where mobility is fine, but if you are down here, you have to avoid mobility. You have a much larger percentage where the amount of use of the part should be quite carefully regulated.

Q. In which cases would you suggest that mobility would be harmful?

A. In acutely inflamed joints.

Q. Well, the ones associated with any particular kind of rheumatism or arthritis.

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1123 A. Mobility is undesirable in the acute inflamed joints of rheumatoid arthritis.

Q. Before you go on—I don't want to divert your thinking so remember what you are going to say—but that just reminds me of a remark that I want to make with reference to your last one. You say in all rheumatoid arthritis, mobility is to be avoided?

A. No.

Q. Was that your statement?

A. No.

Q. What was your statement?

A. There are certain stages of all these forms of arthritis. They are stages that all patients don't necessarily pass through, but there are certain stages of all these forms were mobility is not indicated particularly with the matter of weight bearing. If a weight bearing joint is affected, it must be guarded against, and I was going to enumerate some of those situations in the acute severely inflamed joint of rheumatoid arthritis, in the infectious arthritis, in the acute inflammatory reaction of gout, and also in patients with osteoarthritis, limitation or at times prohibition of weight bearing is an important part of their treatment. Now, it is necessary to make a distinction very frequently between mobility in the sense of exercise and weight bearing, and much more frequently, it is the weight bearing.

1124 Q. It is weight bearing that you say should be avoided; is that it?

A. Yes. There are also circumstances where motion, any type of motion, should be avoided.

Q. Do those circumstances obtain quite generally?

A. Non-weight bearing motion can usually be permitted.

Q. Usually?

A. Yes.

Q. If there are any instances in which it cannot, are they few in number?

A. Relatively few.

Q. Do you know whether the opinions of your colleagues with similar backgrounds to your own coincide with yours with respect to these positions?

Mr. Callaway: I object to that.

Mr. Brodkey: I asked him if he knows.

Mr. Callaway: That is asking him as to what other folks think about the same thing that he has testified about.

Mr. Brodkey: That is exactly what I mean.

Mr. Callaway: That would be hearsay and I object to it.

Trial Examiner Lipscomb: I think the objection is well taken. I will sustain the objection.

By Mr. Brodkey:

1125 Q. Now, Doctor, with respect to your comment on the various diagnoses of Dr. Weisberg, if I may be permitted to summarize it, and you tell me if I am wrong, I think you testified in effect that in the cases named purporting to be those which Dr. Weisberg had made diagnoses on, some nine in number, that on the basis of what the record showed, Dr. Weisberg could not have made an accurate diagnosis. That was your opinion; is that correct?

A. It is my opinion that an accurate diagnosis could not be made on the information available.

Q. On the information available. Now, what do you mean by that?

A. On the information which is indicated here in the record.

Q. In the record?

A. Yes. I think you will notice that the record—the statement with respect to accurate diagnosis was not uniform with respect to each of those various cases. They represent distinctly different problems. I do not feel that they can be lumped together in a statement that—

Q. You do not think that my characterization was a fair one?

A. No, I do not.

Q. You did not say that an accurate diagnosis could not have been made on the material disclosed by the record in Dr. Weisberg's possession in each of those in-
1126 stances? That was not your testimony?

A. The statements on the record are there.

Q. Apparently I didn't understand you. I took that to be the effect of your testimony. Was it not your testimony that Dr. Weisberg could not have made an accurate diagnosis on the basis of the information to which he testified in the record?

Mr. Callaway: I particularly asked the Doctor to deal with these cases separately, because, as he said, they present separate problems, and I think it is unfair, this type of cross-examination, to ask him to lump them all together.

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By Mr. Brodkey:

Q. All right. Let us go back. What was your characterization of Dr. Weisberg's diagnosis of the case of Peter J. Maretta, Dr. Robinson? I am only asking you how you characterized his diagnosis in that case.

A. Peter J. Maretta—I do not think an accurate diagnosis can be made on the basis of the information.

Q. You don't think one can be made on the basis—

A. Of the information available in the record as I have seen it. That is the only information I have.

Q. Now, if the doctor had other information not disclosed by the record, it is possible that he might have made a proper diagnosis; is that right?

Mr. Callaway: Objection. That is not cross-exami-

1127 nation at all.

Mr. Brodkey: Why isn't it?

Mr. Callaway: For the simple reason that the Doctor has no way of passing on anything except what is in the printed record, the typewritten record which I asked him to read. That is what his testimony was about. Now, of course, any doctor may have other information in the back of his head and all that sort of thing, and that is not what I have asked him about.

Trial Examiner Lipscomb: I think the objection is quite good.

Mr. Brodkey: It is sustained, your Honor?

Trial Examiner Lipscomb: It is sustained.

By Mr. Brodkey:

Q. What do you feel was missing in that case?

A. If I may summarize the situation on Maretta, the essential information—

Q. Can't you answer that question specifically? What was missing?

A. Well, practically everything, sir. I would like to say what was there.

Q. That is all I want to hear you say, Doctor.

Mr. Callaway: Let him explain it. He is entitled to explain his position on that.

The Witness: The only information indicated is

1128 this: We have the statement that the patient stated he had pain in a certain distribution of his leg a certain length of time before; that it was no longer present, and the examination did not show any abnormality

at the time of the examination some months later. I do not think that any physician can make a diagnosis as to what the patient had a period of time before by a description of symptoms. All the physician can say is that the behavior of a certain disease is compatible with producing those symptoms, and they have disappeared. There are a host of other diseases that might have produced exactly the same symptoms that have disappeared, and any diagnosis in the sense of a diagnosis under those circumstances, is ridiculous, in my opinion.

By Mr. Brodkey:

Q. Would your answer be the same or similar if I were one by one to go everyone of these cases? Would it be in effect that Dr. Weisberg either couldn't or didn't make an adequate diagnosis by the facts which the record discloses?

A. No, because there are other situations where there are positive findings where perhaps the story is a little more suggestive of a definite condition, but where—

Q. Now wait a minute, Doctor—

Mr. Callaway: Let him finish. Don't cut him off.

By Mr. Brodkey:

Q. All right. Go ahead, Doctor.

1129 A. —But where there are easily available additional measures to establish the diagnosis which were not used—

Q. Do I understand you to say that Dr. Weisberg might have been right in some of these cases? Is that what you are saying, in effect?

A. It is entirely possible that he was right in some of these cases.

Q. And that it wouldn't just be an accident if he were right?

Mr. Callaway: I don't hardly see how that is competent.

Mr. Brodkey: I would like an answer to that question.

The Witness: Of course not.

By Mr. Brodkey:

Q. Now, among the qualifications of your own which you described, Doctor, I think you said you had a certificate in internal medicine; is that true?

A. Yes. I am certified by the American Board of Internal Medicine.

Q. Did you read any part of that record relating to the qualification of Dr. Weisberg, or were only certain parts of the record pointed out to you?

A. No. I read the entire testimony of Dr. Weisberg. I don't recall exactly the details of his qualifications.

Q. Do you remember whether or not he was a
1130 Diplomat in internal medicine?

A. It is my impression that he was, but I am not sure without consulting the record.

Q. That is true. If I were to tell you that he, like yourself, had treated many cases of rheumatism and arthritis—by the way, rheumatism and arthritis are part of internal medicine, aren't they?

A. In general, yes.

Q. If that were true, would you say that Dr. Weisberg was just sort of groping in these cases, guessing—I think that is the word that was used.

Mr. Callaway: Your Honor please, he stated the cases in which he thought it was a guess.

Mr. Brodkey: You mean you told him which ones to call a guess.

Mr. Callaway: I did not.

Trial Examiner Lipscomb: Just a moment. I think the statement was that the facts in the record regarding the individual cases would not allow him to make a proper scientific conclusion, and on those facts alone, it would be a guess. Is that not right, gentlemen?

Mr. Brodkey: Yes. I think that is true.

By Mr. Brodkey:

Q. Do you think Dr. Weisberg was guessing
1131 throughout all this, bearing in mind his qualifications?

Mr. Callaway: That is objectionable entirely.

Trial Examiner Lipscomb: You are going outside of the record. Confine your questions, if you will, to not what the Doctor may have thought outside of the record because that is a realm apart which we don't want to go into, but on the record here. Let us go into that matter and that matter only.

By Mr. Brodkey:

Q. What does it take to become a Diplomat in the American Board of Internal Medicine?

A. The training requirements involve a total period of

five years in training in internal medicine. There is some variation permitted according to the type of training available in different types of institutions. After the training has been satisfactorily completed, the individual applies to the American Board to take examinations, and a written examination is given. If that is passed, then a practical examination. If that is passed, the individual receives certification as being trained and qualified in the field of internal medicine.

Q. Does an applicant exhibit evidence of his proficiency in diagnostic techniques?

A. That is the type of practical examination that is given. He is usually assigned two patients. One he works up completely and presents to the examiners. The 1132 questioning of the examiners frequently has very little relationship to the patient he has examined, but they have an opportunity for examining on his proficiency and diagnosis if they care to.

Q. Do I understand you to suggest that one might become a Diplomat without certain recognized abilities in the art of diagnosis?

A. No. I didn't want to indicate that. The examination proper by itself is not necessarily—

Q. I know, of course, the same as you do, that many doctors make mistakes in their diagnosis. Do you think they do so very generally, particularly if they are well qualified doctors?

Mr. Callaway: That is not competent cross-examination.

Mr. Brodkey: I think it is. You have a list of nine specific instances and I want to ask this man in plain language whether or not he thinks that Dr. Weisberg was wrong in the nine cases that he himself picked to describe.

By Mr. Brodkey:

Q. Is that a fair appraisal of a man's diagnostic ability?

A. I do not think he was wrong in nine cases, obviously. However, I think it depends very much on what you mean by diagnosis, sir.

Q. Well, what could I mean? I am a layman. I only know one thing that I think a diagnosis means. You tell me what it means.

A. Well, I will state the process of arriving at a

1133 diagnosis. Properly speaking, a diagnosis is taking all information which is available, putting it together to understand the cause of any patient's symptoms, what the disease process is. In the process of so doing, a physician obtains a history which may be detailed. It may be rather superficial. He does an examination which again may be detailed or superficial. On the basis of that information, he arrives at a clinical impression which to me is not a diagnosis. That clinical impression may list several possibilities. Then there are available further methods of examination such as: Laboratory examination, use of various other types of diagnostic techniques to establish or disprove that clinical impression, and a diagnosis is definitely established only when those additional measures have been undertaken.

Now, if I may, I would like to illustrate very definitely with respect to the patient in whom the diagnosis of gout was placed by Dr. Weisberg. May I do so?

Q. Oh yes. You don't have to find the name necessarily for the records here. We will just consider you are speaking of the one with gout, whoever that may be.

Mr. Callaway: King Hayes was the name.

The Witness: That patient's story with respect to the acute attacks of joint pain is highly suggestive of gout.

However, to establish a diagnosis of gout, we do not 1134 feel that that story is adequate. We have seen too many patients with a sore like that that has turned out not to be gout. Gout is diagnosed: One, by finding definite tophi deposits of uric acid which cannot be present in other diseases, which this patient did not have, or by a combination of three findings, one of which is the clinical characteristics entirely. The second, which is the laboratory finding of elevated serum uric, and the third which is the direct response to an effective medication, namely colchicine. We do not accept a diagnosis of gout without the combination of those three findings. I would say it is an adequate clinical impression, but not an adequate diagnosis.

Q. Am I correct in stating then that you called something you described an adequate diagnosis and something else an impression gained by a doctor? That is you defined one thing as an adequate diagnosis and another which you called a doctor's impression.

A. A clinical impression.

Q. Is it not a fact that the line of demarcation between

various diagnoses and so-called impressions is a hazy one at best, a very nebulous one?

A. Unfortunately there are fields of medicine where one cannot go much farther than what we call a clinical impression. In a great many other fields, one can go farther and definitely pin down a diagnosis.

1135 Q. Would you call what you have just described as an impression, a guess? Is that the same thing to your mind?

A. No. You will note that in my testimony, I did not feel that the situation with respect to this patient called for a characterization, namely a guess. However, I do characterize some of the other patients as nothing more than a guess because I honestly feel that under those circumstances, it was nothing more than a guess.

Q. But in some cases, you feel that there may have been a quite definite impression, clinical impression I believe you used?

A. That is correct.

Q. Isn't such a finding in the nature of a clinical impression about all that most doctors resort to in most instances?

Mr. Callaway: That is asking what other physicians do.

Mr. Brodkey: That is observation, not hearsay. I want to know if they are all more or less guesses.

Mr. Callaway: In the first place, that is not correct cross-examination. In the second place, there is no way for a man to know to answer that.

Mr. Brodkey: He may have observed.

Trial Examiner Lipscomb: I think the Doctor couldn't possibly know what most doctors do. He knows what

1136 many of them do, but not what most of them do.

By Mr. Brodkey:

Q. Can you tell us what many of them do? Do the majority of them resort to a complete diagnosis such as you have described, a complete detailed diagnosis?

Mr. Callaway: I object to that question.

Trial Examiner Lipscomb: Objection sustained.

By Mr. Brodkey:

Q. Is it your feeling, Doctor, that Dr. Weisberg either couldn't or didn't make an adequate diagnosis in these cases?

A. The record indicates the amount of time spent with his individual patients, which I would consider totally inadequate for getting a history. The record indicates that many of them were examined only at the part where there were complaints. They did not conduct a complete physical examination and so forth. It is my feeling that such procedures are inadequate for accurate diagnosis.

Q. You never make a diagnosis without subjecting every patient to a complete and thorough analysis that you have described including history and all the tests and examinations, whatever else you listed? You don't do so yourself without going through the entire diagnosis as you have described it?

A. I think that is substantially correct. Regarding them without going through the complete diagnostic pro-
1137 cedure, there are occasional exceptions. For instance, where you have a single finding which may be pathognomic—I mean it occurs in that disease and no other disease—of course, if you find that and make a diagnosis without going through the detailed procedure—

Q. Do you know that those conditions could not possibly have obtained in any of the instances described by Dr. Weisberg?

A. Wait a minute. Those conditions—

Q. The pathognomic condition is what I am referring to. What does pathognomic mean?

A. That means a finding that occurs in one disease, and which if you find it, the diagnosis can occur only there and in no other position. As an example of that, you have this matter of uric deposits in patients with gout. If those are present, that means gout and it don't occur in any other diseased condition. However, the disease can be present without necessarily having that so-called finding.

Q. Doctor, I believe you stated that the hospital with which you are connected does not have a definite separate rheumatism and arthritis clinic; is that right?

A. That is correct.

Q. But you are in charge, is that correct, in charge of all cases relating to rheumatism and arthritis? Would that be a correct statement?

1138 A. For practical purposes, yes. Would you like me to—

Q. Do you want to qualify it?

A. —To explain the situation in detail?

Q. Yes.

A. Our unit is set up primarily for investigative work. In the process of investigative work, we take care of a large number of patients.

Q. What do you call a large number?

A. Our current census involves about 200 patient visits a month.

Q. 200 per month?

A. Yes. That is out-patients plus additional patients in the hospital. The limitations of space prevent a true arthritis clinic where all patients with arthritis and rheumatism will be seen. At the present time, out-patients are seen in the department of Internal Medicine, the medical out-patient department, and will be hospitalized usually on the medicine ward. We furnish consultation service with respect to all patients in the hospital, to a substantial number of out-patients as our staff and facilities permit, and those patients on whom we wish to carry out long periods of observation, special observation, we take responsibility for and handle them from our own out-patient department, or handle them on the hospital ward. That is a condition which permits us to study patients inten-

1139 sively,—

Q. Now, Doctor—

A. —In the various aspects—

Mr. Callahan: Let him finish.

By Mr. Brodkey:

Q. I am sorry. I thought you had finished. Go ahead.

A. It permits us to study patients with rheumatic disease very intensively using a variety of procedures, rather than a system which permits us to see a large number of patients in what sometimes may be a relatively superficial fashion.

Q. Now, I have noted two statements you made in that explanation, Doctor. First, you seemed to use the editorial "we". I imagine it is an editorial "we". You say "we do this and we do that." Just what do you do personally? Do you treat all these patients?

A. I have associated with me two physicians, one of whom spends a great deal of time in the management of the patients, and the other, who does some work with patients and also considerable amounts of laboratory work. The remainder of the staff aside from the nurses are concerned with laboratory procedures.

Q. Now, these patients are treated, are they not?
A. That is correct.
Q. This isn't just a study here in the nature of
1140 research, is it? You are actually going to take care of them? You do take care of them, don't you?
A. It is impossible to do investigation without taking care of patients.
Q. I see. Now, do you take care of them? Do you treat them?
A. Yes indeed.
Q. How many do you treat personally?
A. In terms of total number of patients?
Q. That will do. Give us an idea, in number, of how many you treat in any given time yourself as distinguished from your associates.
A. Fifteen to twenty a week.
Q. Are your opinions given here today predicated in part upon your observations in the course of that treatment?
A. Very definitely, yes.
Q. Are they also predicated in part upon the observations of your associates?
A. You mean by "associates", in the University Hospital?
Q. That is right.
A. Yes indeed.
Q. You rely heavily upon their observations?
A. I would like to indicate the way in which we proceed. We work together as a team, and my associates may see the patient on one return visit. I will see the
1141 patient on a subsequent return visit. We see the patients together that are in the hospital so that it is rather ridiculous to say their observations as distinct from mine because their observations are made jointly with mine.
Mr. Brodkey: I believe that is all, Doctor.

Redirect Examination by Mr. Callaway.

Q. Doctor, just one or two more questions. Mr. Brodkey asked you some questions back there in regard to where relief in cases in which relief of pain was obtained by salicylates, would not that increase the mobility of the joint. Did I understand you or did I understand him in

that question to say that the increase in mobility was because before relief of pain was obtained, the man was reluctant to move his limb and after the pain was relieved, he was not reluctant to move his limb?

A. I did not make that statement, but it was included in a question directed to me that the patient moved the limb because it did not hurt, and I agreed that in certain circumstances, that is true.

Q. In other words, do I understand from that that the joint has had the same range of motion all the time and the patient would not put the joint through that range of motion because of the pain it occasioned; is that correct?

A. That appears to be the situation in certain
1142 patients, very definitely.

Mr. Callaway: That is all.

Recross Examination by Mr. Brodkey.

Q. Doctor, is it not a fact that in an overwhelmingly large number of cases of rheumatism and arthritis, these cases are, for want of a better word, ambulatory or not too severe?

A. Are you speaking of—

Q. How would you characterize it? I think you know what I am groping for.

A. All patients in the rheumatic disease group?

Q. Most of them are ambulatory, are they not?

A. The majority of them are ambulatory.

Q. And not too severely affected?

A. It all depends on what you mean by severity, because there are certain forms that may be mild at times and may be very severe at other times. But certainly the larger portion of these patients are able to be up and around. Many of them do carry on their duties and household activities with a greater or less degree of discomfort. But there are also a substantial portion of them in whom the disease progresses from severe, crippling, to incapacitation, to dependency on family or public funds, and that is not a negligible portion of the total number.

Q. I will try to be a little more specific. Doctor,
1143 Mr. Callaway just referred to those patients who had the normal range of motion and were reluctant to use the members on account of pain, which you suggest

might be relieved by the use of salicylates. Isn't that the overwhelming majority of all those patients suffering from rheumatism and arthritis, those that do have the normal range of motion but are reluctant to utilize their ability in that connection?

A. I don't think that we can generalize to that extent. As I understood Mr. Callaway, that does not mean necessarily that there was a normal range of motion there that the patient was reluctant to use, but might have well been limitation of motion, and after the pain was relieved, he was able to move it to a certain degree, but very definitely not implying that it restored the range of motion to normal, or that the range of motion was normal originally.

Q. But I do think you testified, did you not, that in many instances, at least, that increased mobility was desirable?

A. Yes indeed.

Q. Now, referring to those instances specifically, could you very quickly give us the reason why you say it is desirable?

A. In most forms of arthritis, and subject to individual qualifications, because generalization is very difficult, most forms of arthritis, motion is desirable to maintain 1144 muscle tone, to maintain nerve control, maintain muscle strength so that if and when the inflammatory process subsides, the functional condition of the joint will be preserved. There are additional theoretical reasons that apply in various types of arthritis which I don't think particularly germane to this issue.

Q. Would you mind taking just one of your own choice and telling us, as simply as you can, what might be a reason as applies to some particular type of arthritis for the advantage of motion?

Mr. Callaway: He already did it, I thought.

Mr. Brodkey: No. He said muscle tone and a few things of that kind. Now, he says that in a specific kind of arthritis, he could tell us other theoretical advantages. I am asking him to tell us one.

The Witness: In the chronic active rheumatoid arthritis—I am not talking about the acute inflammatory phase—but in the chronic self-continuing phase, motion is desirable to prevent the growth of the granulation tissue, the scar tissue, the stuff which turns into scar tissue to be exact, to prevent the growth of that over the cartilage, the

destruction of the cartilage and the formation of this granulation tissue between the ends of the bone, then the transformation of scar tissue and then developing
1145 what we call a fibrous ankylosis. Now, the use of properly regulated motion for long periods of time is important in preventing that sequence of events in rheumatoid arthritis.

Q. Am I correct in assuming that if permitted to go on, you could tell us more advantages to motion or regulation of motion in rheumatism?

A. Yes, in the various stages.

Q. And all this motion would be possible, would it not, Doctor, if one were to relieve pain by means of salicylates?

A. I wish it would. I wish it were true in all cases.

Q. Well, in a substantial number of cases?

A. Again the matter of degree is important. In rheumatoid arthritis which we have been—I will use again as an example—the increased mobility resulting from the use of salicylates and the proper use and dosage of salicylates varies a great deal in degree from one patient to another, and in general, the increased mobility is not the result immediately of pain relief. It is the result of various additional measures particularly measures under the heading of—the physical heading, I should say, of medicine which are added and which are important in obtaining that increased mobility. I certainly wouldn't want to give the impression that—

Q. Do you know the quantity of salicylates in the product Imdrin?

1146 A. In the recommended dosage?

Q. Yes.

A. On the label?

Q. Yes.

A. It is approximately 20 grains per day.

Q. You spoke of something being toxic. Would that be toxic?

A. That would not be toxic. There are occasional patients—

Mr. Brodkey: That is all.

The Witness: —Who have it, who have idiosyncrasies with that dose, but it is not toxic.

By Mr. Brodkey:

Q. There would be an occasional patient with whom it would be toxic? Is that the impression that you wish to give?

A. Well, how would you define toxic?

Q. You define it. You are the doctor.

A. I have seen patients who have had classical manifestations salicylism, what we regard as the toxic manifestations on doses of 15 to 20 grains per day. It is, however, very unusual.

Q. How many such do you know of?

A. I have seen two.

Q. Out of how many cases that you have seen; thousands?

A. Yes.

Q. Two out of thousands?

1147 A. Yes. It is a very low percentage.

Mr. Brodkey: I believe that is all.

Mr. Callaway: That is all. Thank you, Doctor.

(Witness excused.)

Trial Examiner Lipscomb: Off the record.

(Discussion off the record.)

Trial Examiner Lipscomb: On the record.

The hearing is adjourned to reconvene by agreement between counsel at Buffalo, New York, at 2:00 p. m., on October 16, 1951.

(Whereupon, at 12:30 o'clock p. m., September 18, 1951, the hearing in the above entitled matter was adjourned to Buffalo, New York, on October 16, 1951, at 2:00 o'clock p. m.)

1148 Room 209, Post Office Building,
Buffalo, New York,
Tuesday, October 16, 1951.

Met, pursuant to notice, at 2:00 p. m.

Before:

Abner E. Lipscomb, Trial Examiner.

Appearances:

Joseph Callaway, Attorney for the Federal Trade Commission.

Edward Brodkey, Attorney for all Respondents, 10 South LaSalle Street, Chicago, Illinois.

1149 Proceedings.

Trial Examiner Lipscomb: The hearing will come to order.

Mr. Callaway, you are recognized.

Mr. Callaway: I want to offer Dr. L. Maxwell Lockie as a witness in this case.

L. MAXWELL LOCKIE was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

Direct Examination by Mr. Callaway.

Q. Doctor, you are a medical doctor?

A. I am.

Q. Where do you live, Doctor?

A. 40 North Street, Buffalo, New York.

Q. Are you practicing medicine at present?

A. I am.

Q. Doctor, you are offered here as an expert witness, and the weight to be given the testimony of an expert witness depends to a considerable degree on his qualifications as an expert. Therefore, I wish you would give us your qualifications as an expert. To start off with, the degrees which you hold and when and where you received them?

A. I graduated from the University of Buffalo
1150 Pharmacy School in 1923 with the degree of Ph. G., from the College of Arts and Science with the degree of B. S. in 1925, from the School of Medicine, degree of M. D. in 1929.

Q. That was all at the University of Buffalo, is that right?

A. Yes, sir.

Q. Now, Doctor, will you tell us next what appointments you have received since graduating from medical school?

A. I am now assistant attending physician at the Buffalo General Hospital, assistant attending physician at the Children's Hospital. I am the head of the arthritis clinic at each of those hospitals. I am consultant in arthritis at the Meyer Memorial Hospital which is our big county hospital.

Q. And, Doctor, do you also teach? Are you connected with the University of Buffalo in any capacity?

A. I am professor of therapeutics at the University of Buffalo Medical School.

Q. I believe you said that you were head of the arthritis clinic at the Buffalo General Hospital and also at the Children's Hospital here in Buffalo?

A. I did. I organized the clinic at the Meyer Memorial Hospital which is a research and consultation clinic to which I visit occasionally at this time.

Q. Doctor, have you had any connection with Johns-Hopkins University?

A. I did. First of all after graduation from the
1151 University of Buffalo Medical School I was interned and resident in medicine at the Buffalo General Hospital for a period of two years, and then I was assistant resident in medicine at Johns-Hopkins Hospital. At that place I organized and started the arthritis clinic. I was there for a period of one year.

Following that I spent four months with various doctors in the United States who are particularly interested in the field of arthritis and allied diseases, particularly in New York City and in Boston and at the Mayo clinic.

Q. Doctor, do you do any actual teaching in connection with the University of Buffalo—your duties there?

A. Well, I have a number of classes in the field of therapeutics, and I am responsible for the teaching by others in

that field. In arthritis all the lectures are given by me or by my associates, at which time I am in attendance in the medical school, and then we have clinics each week or every other week to which there are from two to four senior medical students, and then on my services in the hospital I have one senior medical student who sees all my private cases and makes rounds with me each time that I visit.

Q. Now, Doctor, what scientific societies are you a member?

A. In Buffalo I am a member of the Buffalo Academy of Medicine; I am a member of the Erie County Medical Society, the New York State Society and the American Medical Association. I belong to Johns-Hopkins Medical Society. There are a number of scientific societies on
1152 which I have to refer to notes to enumerate. I am a member of the Buffalo Arthritis Association and its president this year, the American Pharmaceutical Association, the American Federation for Clinical Research, National Rehabilitation Association, Erie County Pharmaceutical Association, American Academy of Compensation Medicine. I am one of a small group forming the American Committee of the Ligue Internationale Contre le Rhumatisme. I am on the Revision Committee of the United States Pharmacopoea for the 12th, 13th and 14th Revisions.

Mr. Brodkey: May it please the Court, at this point it would appear that Dr. Lockie has suggested the need for his consultation of certain notes which he has before him, and up to this point I have no objection to his doing so. But, in anticipation that it may be carried into further areas wherein there might be some controversy, I ask that Dr. Lockie be requested not to refer to notes covering other that, perhaps, this preliminary qualifying matter, unless he can, of course, satisfy Your Honor in the first instance he requires them to refresh his memory and there, of course, we will see what develops.

Trial Examiner Lipscomb: Doctor, you will observe the request, do not consult your notes.

The Witness: I shall be glad to.

By Mr. Callaway:

1153 Q. Is there any other, Doctor?

A. I am a member of Alpha Omega Alpha, which is an honorary society, and I am a fellow of the American College of Physicians.

Q. A fellow of the American College of Physicians?

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A. That is correct.

Q. Now, Doctor, are you a member of the American Rheumatism Association?

A. I am, and have been since its inception.

Q. Have you had any particular connection or offices with the American Rheumatism Association?

A. I am Chairman of the committee which has been formed for the Evaluation of Drug and other Forms of Therapy as relates to Arthritis and Rheumatic diseases. I am on the Editorial Board and also on a newly formed committee for Public and Press Relations.

Q. Doctor, have you had any scientific papers published. Now, this is one in which reference will have to be noted.

Mr. Brodkey: If there is an extensive list, as I anticipate there may well be, certainly we have no objection.

Mr. Callaway: Do you have an extra copy of that made up? We might let Mr. Brodkey have a copy of it.

Mr. Brodkey: I might ask the Doctor, without taking the time to go over the list at this point, whether all the articles listed here have to do with rheumatism and
1154 arthritis, whether he is the author of those articles, and whether they are duly published? That is a three part question. If he can simply state that such is the case, why I don't think it will be necessary to question him on each article individually.

The Witness: If you will refer to the number, the first few have to do with the diseases of the suprarenal glands particularly like Addison's disease, and Dr. George Thorn and I were together, and that takes in the first two. Otherwise, I am author or co-author of the paper, and all of them have to do with the field of arthritis and rheumatic diseases.

Mr. Brodkey: Just Nos. 1 and 2 do not apply to that field?

The Witness: That is right.

By Mr. Callaway:

Q. I believe the list numbers 26, is that right?

A. What is the last date?

Q. April 15, '51?

A. That is correct.

Q. Doctor, I have this list which you have furnished me and furnished counsel for Respondents in my hands. If I understand it, this list shows the date of the publication,

who the authors are, the title, and the scientific journal in which the articles were published, and where they can be found in that publication, is that correct?

A. Yes, sir.

Mr. Callaway: With that statement I would like to have the reporter copy this list of publications at this point into the record to shorten the time, the same as if Dr. Lockie had read them out one by one.

Mr. Brodkey: I believe that has been our custom here.

Trial Examiner Lipscomb: There being no objection it is so directed.

The Witness: (1) 1931, Addison's Disease, Case Report, Bull. Erie Co. & Buffalo Acad.

(2) 3/5/32, Hartman, Frank A., Ph.D.; Thorn, George W.; Lockie, L. Maxwell; Greene, Clayton W.; and Bowen, Byron D.: Treatment of Addison's Disease with an Extract of Suprarenal Cortex (Cortin)—The Journal of the Amer. Med. Assoc., Vol. 98, pp. 788-793.

(3) 4/32, Hartman, Frank A.; Lockwood, J. E.; Lockie, L. M.: Lowered Resistance to Heat in Adrenal Insufficiency—Proceedings of the Society for Experimental Biology and Medicine, pp. 409-412.

(4) 2/34, Lockie, L. Maxwell; and Hubbard, Rober, Ph.D.: Presentation of a Case of Gout—Bulletin Medical Society, County of Erie and Buffalo Academy of Medicine.

(5) 6/8/35, Lockie, L. Maxwell; Hubbard, Roger S., Ph.D.: Gout Changes in Symptoms and Purine Metabolism produced by High Fat Diets in Four Gouty Patients—Journal of the American Medical Association, Volume 104, pp. 2072-2075.

(6) 2/36, Bowen, Byron D.; Lockie, L. Maxwell: Chronic Atrophic Arthritis: The Effect of a High Carbohydrate Diet and Insulin on the Symptoms and Respiratory Metabolism—Journal of Laboratory and Clinical Medicine, Volume 21, No. 5, pp. 505.

(7) 11/3/35, Lockie, L. Maxwell: A Resume of Some of the Current Concepts in Arthritis—The Physiotherapy Reviewed, Volume 15.

(8) Lockie, L. Maxwell: Gout—The Cyclopedia Medicine (Piersol), F. A. Davis Company, pp. 879-894.

(9) 2/38, 6/38, 8/38, 11/38, Sanes, S.; Lockie, L. Maxwell; Vaughn, S. L.; So-Called Felty's Syndrome: Report of Case with Autopsy—Archives of Pathology, Volume 25, pp. 298-300 and 933-936 (February and June, 1938), Vol-

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ume 26, pp. 598-601 and 1082-1084 (August and November 1938).

(10) 11/39, Lockie, L. Maxwell: A Discussion of a Therapeutic Test and a Provocative Test in Gouty Arthritis—Annals of Internal Medicine, Volume 13, No. 5.

(11) 1942, Lockie, L. Maxwell: The Diagnosis of the "Initial" Attack of Gouty Arthritis—Clinics, Volume 1, No. 3, pp. 571-576.

(12) 12/41, Hench, Philip S.; Bauer, Walter; 1157 Boland, Edward; Dawson, M. Henry; Freyberg, Richard H.; Holbrook, W. Paul; Key, J. Albert; Lockie, L. Maxwell; McEwen, Currier: Rheumatism and Arthritis—Review of American and English Literature for 1940—Annals of Internal Medicine, Volume 15, No. 6, pp. 1002-1108.

(13) 7/42, Lockie, L. Maxwell; Sanes, S.; and Vaughn, Stuart L.: Chronic Arthritis: Associated with Neutophilic Leukopenia, Splenomegaly and Hepatomegaly—American Journal of Clinical Pathology, Volume 12, No. 7.

(14) 8/1/42, Jordan, Edwin P.; Bauer, Walter; Boots, Ralph E.; Cecil, Russell L.; Coggshall, H. C.; Dawson, M. Henry; Hench, Philip S.; Key, J. Albert; Lockie, L. Maxwell; Minot, George R.; Pemberton, Ralph; Swaim, Loring T.; Primer on Arthritis (prepared by a Committee of the American Rheumatism Association), Volume 119, pp. 1089-1104.

(15) 9/45, Lockie, L. Maxwell: Treatment of Rheumatoid Arthritis—American Journal of Clinical Medicine, Volume 52, No. 9, pp. 308-309.

(16) 3/16/47, Lockie, L. Maxwell; Norcross, B. M.; and George, C. W.: Treatment of Two Reactions Due to Cold—Response of Thrombopenic Purpura and Granulocytopenia to BAL Therapy, Volume 133, pp. 754-755, Journal American Medical Association.

(17) 4/15/47, Lockie, L. Maxwell; Musgrove, Earnscliffe, ARPTT: Physical Therapy in the Treatment 1158 of Arthritis—New York State Journal of Medicine, Volume 47, No. 8.

(18) 4/3/47, Lenzner, Alfred R.; Lockie, L. Maxwell; Becker, Charles F.: Acute Yellow Atrophy Following Cinchophen Administration—New England Journal of Medicine, Volume 236, pp. 500-504.

(19) 2/28, Help for the Arthritic—Norcross, Bernard

M.; Lockie, L. Maxwell, Public Health Nursing—Volume 40, No. 2, pp. 90-93.

(20) 2/48, Hench, Philip S.; Bauer, Walter; Boland, Edward W.; Crain, Darrell C.; Freyberg, Richard H.; Graham, Wallace; Holbrook, W. Paul; Lockie, L. Maxwell; McEwen, Currier; Rosenberg, Edward F.; Stecher, Robert M.: Rheumatism and Arthritis: Review of American and English Literature of Recent Years (Ninth Rheumatic Review) Part II, Annals of Internal Medicine, Volume 28, pp. 309-451.

(21) 12/48, Lockie, L. Maxwell; Norcross, Bernard M.; Juvenile Rheumatoid Arthritis—Pediatrics, Volume 2, No. 6, pp. 694-698.

(22) 5/28/49, Norcross, Bernard M.; Robins, Harold M.; Lockie, L. Maxwell: D-Tubocurarine in Oil-Wax Suspension in Rheumatoid Arthritis—Journal American Medical Association, Volume 140, pp. 397-400.

(23) 6/6-10/49,Talbott, John H.; Norcross, Bernard M.; Lockie, L. Maxwell: Gout and Gouty Arthritis—Discussion at Scientific Exhibit of Annual Meeting AMA, 1159 Atlantic City, New Jersey.

12/6-9/49 (above—also at Interim Meeting AMA—Washington, D. C.).

(24) 10/49, Obletz, B. E.; Lockie, L. Maxwell; Milch, Elmer; Hyman, Irving: Early Effects of Partial Sensory Denervation of the Hip for Relief of Pain in Chronic Arthritis (read at annual meeting American Acad. Orth. Surgeons, Chicago (1/28/48)—Journal of Bone and Joint Surgery, Volume 31-A, No. 4, pp. 805-814.

(25) 12/50, Talbott, John H. and Lockie, L. Maxwell: Gouty Arthritis, from Department of Medicine, Buffalo General Hospital and University of Buffalo School of Medicine, Buffalo, New York, Ciba Clinical Symposium, Volume 2, No. 10.

(26) 4/15/51, Norcross, Bernard M. MD; Lockie, L. Maxwell, MD; Talbott, John H., MD: Evaluation of Steroids in Rheumatoid Arthritis (From the University of Buffalo School of Medicine and the Buffalo General Hospital)—New York State Journal of Medicine, Volume 51, No. 8, pp. 1031-1037.

By Mr. Callaway:

Q. Doctor, in the hospitals and clinics which you attend, have you seen and treated many patients suffering with osteoarthritis?

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A. I have.
Q. Have you seen and treated many patients suffering with rheumatoid arthritis?
1160 A. I have.
Q. Infectious Arthritis?
A. I have.
Q. Gout?
A. Yes, sir.
Q. And other rheumatic diseases?
A. Yes, sir.
Q. Do you have any idea approximately how many patients suffering with various rheumatic diseases you have seen and treated?
A. If I may refer to my notes I can give some information regarding that.
Q. All right.
Mr. Brodkey: Yes, for that purpose, and if the Doctor says he can refresh his recollection from his notes. By the way, I should like to just ask these preliminary questions, if I may to determine whether or not the notes are proper for that purpose—authentic. Doctor, did you make those notes yourself?
The Witness: Yes, sir.
Mr. Brodkey: Were they taken from any other source?
The Witness: No, sir.
Mr. Brodkey: That is the original notation?
The Witness: It is a first and original.
Mr. Brodkey: So you, shall we say in the vernacu-
1161 lar, took it out of your head?
The Witness: That is true of parts and those parts I will tell you.
Mr. Brodkey: When were the notations on your notes made?
The Witness: Last week, Wednesday or Thursday.
Mr. Brodkey: Then as far as the notes themselves are concerned, I believe I am going to have to object to their use for this purpose, because it would appear that the type of failure of recollection we have is one of past recollection to recall rather than present recollection to revive. I think the Doctor is able to make a general statement without the particular information the notes would care to warrant. If he treated a lot of patients, that is one thing. If he is to particularize as to numbers or persons or anything of that kind, we have something else.
Mr. Callaway: We have no desire to characterize as to

the number of persons, but the Doctor says he has gotten up some notes himself on the number and type of cases of suffering for the various rheumatic diseases which he has treated, and I certainly think—they are his own notes that he has made himself as I understand it, and I certainly think he is entitled to refresh his memory for the purpose of giving the Trial Examiner the knowledge as to how many people he has treated, and this has a bearing on the case.

1162 In other words, here is a man who has treated many thousands of rheumatic people. Now, his opinion—

Mr. Brodkey: If that is all there is to it, Mr. Callaway, let him testify to that. He doesn't need notes for that. If you want something else in those notes I submit the Trial Examiner knows full well that there are more qualifications or foundations than simply he shall have made this himself. The time when they were made is very important.

Mr. Callaway: Now, as I understand, he needs to refer to them as to the breakdown into the various types of arthritis and rheumatic conditions which he has treated, approximately so many of a certain type and so many of another type.

Mr. Brodkey: If that is all you have in mind—so many of one kind, so many of another—I don't object to that if that is all you have in mind. I wouldn't want you to develop it any further from those notes.

By Mr. Callaway:

Q. That would be sufficient, would it, Doctor?

A. I thought I would be asked how many patients I had seen who had arthritis. That is why I put these together. Nobody's investigation except my own. I felt, as a fellow bank president giving a report of his condition in the bank,

1163 I would state the exact number of patients I have on record in my office, of which I have 8,136, and all of those are people who has arthritis, with an exception of a few personal friends who asked me for an examination on them. I have seen at least 4,000 others. We won't divide that up. In the last group of 1644 rheumatoid arthritis patients I have seen 224 with rheumatoid spondylitis and 103 with gout.

Q. That is, in the last 1600, I believe you said, that you had seen among a larger group which you gave before?

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A. That is right.

Mr. Brodkey: Dr. Lockie, if that is all Mr. Callaway wants from you, I have no objection. I withdraw graciously. However, I'd like a statement from Mr. Callaway, if he will, whether that is all he wants with reference to that information. If you are going to enlarge, I want to object.

By Mr. Callaway:

Q. Do you have it broken down, Doctor, as to larger groups as to how many patients you have seen of each type?

A. I have.

Q. I would like to have that.

A. I will give these approximate figures. At Johns-Hopkins Hospital I saw approximately 300, Buffalo General Hospital Clinic I have seen 1100, I have seen in general consultation approximately 2500 people in the last 20 years that I have specialized in this group of diseases. At the Children's Hospital we have about 118 to 120 in 1164 our clinics. Those are children who were under 15 years of age when first seen. At Meyer Memorial Hospital—300.

Q. Total of how many did you say?

A. This adds up to 12,500.

Q. I take it, Doctor, then in your hospital connections and clinics you have attended and followed the course of these various diseases and disorders, including their complications?

A. Yes, sir.

Q. And have you had occasions, as I take it, to conduct studies in research clinically, that is, in patients with rheumatic and arthritic conditions?

A. Yes, sir, and some of those results have been published.

Q. I see. Doctor, you are being offered here as a rebuttal witness, and I call your attention to the testimony of Dr. Weisberg, appearing in this record on pages 575 to 641. Have you read that testimony?

A. Yes, sir.

Q. I call your attention to the testimony of Dr. Black appearing on Pages 642 to 671 in this record. Have you read that testimony?

A. I have.

Q. Now, Doctor, I call your particular attention to the testimony of these two doctors.

A. May I speak off the record for just a minute?

1165 Trial Examiner Lipscomb: Off the record.

(Discussion off the record.)

Trial Examiner Lipscomb: On the record.

By Mr. Callaway:

Q. Doctor, I call your particular attention to the testimony of these two witnesses in regard to what they have said about the effect of the administration of salicylates on the reduction of redness, swelling and immobility of joints in various kinds of arthritis, and I would like your opinion as to whether there is any correlation between the administration of salicylates and the reduction of redness, swelling and immobility of joints in various kinds of arthritis?

Mr. Brodkey: One moment before you answer that question. If you will permit me at this time I would like to interpose an objection to it.

Mr. Callaway: I am not through yet.

Mr. Brodkey: I am sorry, will you continue. Accept my apologies for the interruption.

By Mr. Callaway:

Q. Now, in discussing this I believe it might be better to deal with the different classifications of arthritis instead of trying to deal with the subject as a whole, so I wish that in answering this question you would deal first specifically with the cause of stiffness in osteoarthritis?

Mr. Callaway: Now, if you have an objection.

1166 Mr. Brodkey: Yes. This question is objected to for several reasons, perhaps the most important of which we have overlooked up to this point, and that is, that it is in substance a hypothetical question eliciting an opinion of the doctor by way of rebutting an opinion expressed by another doctor. Regardless of what that opinion might be, it must be based on proper premise. The hypothetical form of question we know is a recognized form but that hypothesis must include all the salient facts, and as far as the facts upon which this opinion is predicated we leave the doctor to determine what they are by this form of questioning, purely on the basis of what he has read and conceives to have been shown and proved as the basis of opinion by Dr. Weisberg given heretofore through reading of that transcript. I submit it is completely improper in

form. I should have interposed an objection at our former hearing but that is water over the dam and you can do nothing about it now. I felt that something was wrong then but I didn't know just what. However, I haven't waived it with respect to this witness.

As far as this witness is concerned it occurs to me that we are not permitting him to determine, as a previous witness was permitted to determine, what Dr. Weisberg said, which appears piecemeal in that transcript. As it happens, in subsequent conference with Dr. Weisberg it de-
1167 velops that part of the hypothesis put to the witness in Ann Arbor, Michigan at our last hearing, was eliminated, actually a very important part of that hypothesis, concerning certain of the testimony to which Dr. Weisberg had previously referred and upon which he, in part, relied.

Mr. Callaway: Now, if Your Honor please, the question to this doctor is, "Will you tell us the cause of stiffness in osteoarthritis". Now, that is the question to this doctor. The rest of it that I have stated into the record as a prelude was the basis for asking him this question, not a question to him. So the question that I am asking him now, if he will please tell us the cause of stiffness in osteoarthritis. With that being the question it looks to me as if all of Mr. Brodkey's objections pass out the window.

Mr. Brodkey: I'd like to be heard if Your Honor please. I don't think it does at all. I am going to impose an objection to that question, which is a lesser one, of course, and that form of question has for a proper objection the fact that no sufficient foundation has been laid. In other words, we are taking this completely out of turn. He is asking the doctor the reason for a decision which he is going to give because he has given the hypothesis upon which to predicate or to give the decision itself. That is what it amounts to. It seems to be he has simply asked the doctor to express his opinion concerning a particular ail-
1168 ment, edict or cause in the human body, and that he can do without reference to Dr. Weisberg's testimony.

Mr. Callaway: I put that in there to point out to you and the Trial Examiner why I seek to elicit this opinion.

Mr. Brodkey: All right. Will you amend your question to simply ask him in plain language what causes—

Mr. Callaway: No, I won't amend my question. I have stated it just as I—

Mr. Brodkey: Then I interpose my objection. I don't want it to be misunderstood to be tied in with Dr. Weisberg's testimony.

Mr. Callaway: This is rebuttal evidence, of course, and we are seeking to rebut the testimony of Dr. Weisberg and Dr. Black.

Trial Examiner Lipscomb: I think counsel can clarify it. If you will repeat your question.

Mr. Callaway: All right.

By Mr. Callaway:

Q. Doctor, will you tell us first the cause of stiffness in osteoarthritis, in your opinion?

Trial Examiner Lipscomb: Just a second, do you object to that?

Mr. Brodkey: No objection to that question.

Trial Examiner Lipscomb: Will you answer the question, Doctor?

1169 A. Stiffness is a symptom of osteoarthritis. Osteoarthritis is produced by a degeneration or wearing of the joint lining and joint surfaces, and when a person says, "I feel that my neck is stiff", it usually means that she or he is unable to turn the neck a full range of motion, prevented by the arthritic process going on in the joints which make up the cervical vertebrae, so that stiffness in a lower back may also be the result of nature's way of having a splinting-like effect on motion of joints. Where there is stress and strain particularly you will have a wearing of the joint linings and degeneration of the cartilage in the joint, and the extra strain causes the stiffening, which is the turning term used by people under those circumstances.

By Mr. Callaway:

Q. Doctor, in your opinion do salicylates have any effect on these causes of stiffness in osteoarthritis?

A. Salicylates do not have any effect on the basic property—I beg your pardon—on the basic cause of osteoarthritis. However, if a person has a mild degree of osteoarthritis with minimum symptoms, yet enough to say that she feels a little bit stiff, I feel that salicylates, through its action in the thymus, will make a person less conscious of the primary cause, and under those circumstances it may decrease the stiffness as a symptom.

Q. Next, Doctor, I wish you would deal with the
1170 cause of stiffness in rheumatoid arthritis. Is ankylosis a cause of stiffness in rheumatoid arthritis?

Mr. Brodkey: I will ask counsel be requested not to lead the witness. Certainly we have had these hearings long enough, and it should not be done on any occasion, suggesting ankylosis to the doctor. Dr. Lockie is apparently well qualified and can supply his own germs better than any of us.

Trial Examiner Lipscomb: Counsel will refrain from leading the witness.

Mr. Callaway: Do I understand that to be a leading question?

Trial Examiner Lipscomb: Suggestive, I believe, following after the other question.

By Mr. Callaway:

Q. Doctor, are there various causes of stiffness in rheumatoid arthritis?

A. There are based on the fact that rheumatoid arthritis is caused by the formation of a membrane that looks like an inflammatory membrane inside the joint. There is destruction of the lining membrane, there is destruction of the joint cartilage, and then in addition, the tissues around the joint may be very much involved, that is, the capsule and the ligaments which make up the joint and promote its action. It may go on to a point where
1171 there is definite adhesion formation and in some cases even a permanent bony union between one bone and the other which makes up the joint.

Q. Now, you have mentioned a bony union, is that what is called ankylosis?

A. Yes, sir.

Q. Do salicylates affect stiffness due to ankylosis in the rheumatoid arthritis?

A. No, sir.

Q. Do salicylates affect stiffness due to, I believe you mentioned, inflammation as another cause, did you?

A. Yes, sir.

Q. Do salicylates affect stiffness due to inflammation in rheumatoid arthritis?

A. I feel hereto it's a question of degree. If there is a minimal amount, a mild case in an early phase, that stiffness may be relieved through the same mechanism which I described in a previous answer, where the action in the thymus will make a person less conscious of pain and discomfort, and in that instant it will help to relieve the stiffness, but if a person has a moderately advanced

or far advanced rheumatoid arthritis, I do not see how it can do so.

Q. Does stiffness have any effect on the underlying inflammation?

A. May I have your question again?

Q. I say, would salicylates have any effect on un-
1172 derlying inflammation?

A. No, sir, not in rheumatoid arthritis.

Q. Now, did you mention muscle atrophy as one of the causes?

Mr. Brodkey: I am going to ask counsel be admonished not to supply suggestions to this witness. He knows he should be—

Mr. Callaway: I thought he mentioned muscle atrophy.

Mr. Brodkey: Did you mention it?

The Witness: I did not.

Mr. Callaway: I beg your pardon.

Mr. Brodkey: There is the answer.

By Mr. Callaway:

Q. May muscle atrophy be a cause of stiffness—

Mr. Brodkey: Object to the form of the objection.

Trial Examiner Lipscomb: Objection overruled, he may answer the question.

A. Yes, muscle atrophy is a cause of stiffness in rheumatoid arthritis.

By Mr. Callaway:

Q. Do salicylates have any effect on stiffness due to muscle atrophy in rheumatoid arthritis?

A. No, sir.

Q. May swelling be a cause of stiffness in rheumatoid arthritis?

1173 A. Yes, sir.

Q. Do salicylates have any effect on stiffness due to swelling in rheumatoid arthritis, Doctor?

A. No, sir.

Q. Now, next I wish you would tell us something of the causes of stiffness in bursitis, or is stiffness present or may stiffness be present in cases of bursitis?

A. Stiffness may be present in cases of bursitis under several conditions, the most common of which is under those circumstances where the bursa, which is a pad over which muscle and tendons glide, if that sac is distended or if there is a calcium deposit in that sac so that there

is mechanical irritation, there will be stiffness associated with bursitis.

Q. Now, would salicylates affect the cause of that stiffness in bursitis?

A. It does not affect the cause of that stiffness.

Q. Well now, let's take up neuritis. May stiffness be present in neuritis, Doctor?

A. Neuritis, like arthritis, is only a symptom. Neuritis means an inflammation or irritation of a nerve. It depends on what the cause of that is. If a person has had a heavy metal, some of them produce neuritis. If a person has an inflammation around a nerve root then that person may have neuritis. I do not think that salicylates can benefit the cause of neuritis, and consequently will not bene-
1174 fit the neuritis itself.

Q. Now, what you have said for neuritis, does it also hold true with sciatica?

A. Sciatica is a special form of neuritis which involves the sciatic nerve. The causes of it most commonly are arthritis of the lower back, a protruded intervertebral disc or the ingestion of certain heavy metals or alcohol, and I do not feel that salicylates benefit those conditions.

Q. Now, Doctor, may a stiffness be present in gout?

A. Stiffness is present in gouty arthritis. Gout is systemic disease from which there may be no symptoms. However, if a person develops arthritis due to gout—I like to call it also gouty arthritis—that individual has an acute attack, there is stiffness. That stiffness is due to, I am sure, an effort on the part of nature to split the joint. That joint is very painful on motion and is painful on pressure.

Q. May there be inflammation in gout?

A. Yes, sir.

Q. Be deposits of urates in gout in the joint?

A. Gout? Yes, sir, there will be, in some cases, deposits of urates in the joint itself, sometimes in the tissues around and many times in the bone itself replacing normal bone.

Q. Now, where inflammation is present in gout,
1175 may that be a cause of stiffness in gout?

A. Yes, sir.

Q. Do salicylates have any effect on the stiffness caused by inflammation in gout?

A. Some people do get temporary relief of their symp-

toms of gout on the administration or following the administration of salicylates. It is not nearly as effective as colchicine which is the specific drug to relieve the acute joint manifestations of gouty arthritis.

Mr. Brodkey: I move that the last answer of the Doctor be stricken as not responsive to the question. Volunteering information by way of comparison with something else is completely irrelevant to our discussion.

Mr. Callaway: I withdraw the question.

Trial Examiner Lipscomb: It may be considered as withdrawn.

By Mr. Callaway:

Q. Now, Doctor, may deposits of urates in the joints be a cause of stiffness in gout?

A. If that deposit is of any appreciable extent in a joint a person can have stiffness as a result.

Q. Do salicylates have any effect on stiffness in gout?

A. Stiffness does not mobiliate the urates from that source. Therefore, I do not think it would have any effect on stiffness due to that phase.

1176 Q. Doctor, is swelling usually present in osteoarthritis?

A. It is not. There are conditions in which it may occur rarely. If a person has an injury to a joint and has blood released into the joint, there will be swelling, and there are some cases where an individual who has osteoarthritis who uses that particular joint a great, great deal, occasionally fluid and swelling appears. It is not common.

Q. May swelling where it is present in osteoarthritis be a cause of stiffness?

A. Yes, certainly.

Q. Do salicylates affect swelling—affect the stiffness which may be caused by swelling in osteoarthritis?

A. No, sir.

Q. Doctor, where swelling is present in osteoarthritis do salicylates affect that swelling?

A. No, sir.

Q. Doctor, is swelling usually present in rheumatoid arthritis?

A. Yes, sir, and is due to two causes—one, where there will be the formation of fluid by the lining of the joint so that the joint is distended, will have some or a great deal of fluid in it, or the swelling may be produced by the thick-

ening of the joint capsule, the ligament and tendons which go to make up that joint capsule. Swelling is a very common part of rheumatoid arthritis.

1177 Q. Doctor, is swelling, or may swelling be present in rheumatoid arthritis—strike that please. Do salicylates have any effect upon swelling due to the causes which you have mentioned in rheumatoid arthritis?

A. No, sir.

Q. Doctor, is there an inflammatory process in rheumatoid arthritis?

A. There is a process going on in rheumatoid arthritis which, on examination of the tissues, looks like an inflammatory process.

Q. Do salicylates affect the underlying inflammatory process in rheumatoid arthritis?

A. No, sir.

Q. Doctor, is swelling usually present in bursitis, or may it be present in bursitis?

A. If it is, it is a very rare thing because the bursa is so small it is difficult to tell on physical examination.

Q. May swelling be present in neuritis, Doctor?

A. No, sir.

Q. May swelling be present in sciatica?

A. Well, do you mean by swelling in these conditions, you mean of the nerve or tissues?

Q. Well, there has been described in the record swelling that you can see visually, and then there has been described, I believe you call it microscopic swelling.

1178 Have you encountered either of those?

A. There is microscopic swelling or adenoma of the nerve in the inflammatory types or causes of neuritis.

Q. Is that swelling due to the inflammatory process?

A. It is.

Q Well, do salicylates have any effect upon the cause of that swelling in neuritis?

A. I don't see how it could.

Q. Now, would what you said in regard to neuritis also hold true for sciatica?

A. Yes, sir.

Q. Doctor, is redness usually present in osteoarthritis?

A. No, sir.

Q. Is redness usually present in rheumatoid arthritis?

A. Rarely.

Q. When present to what is it due, in your opinion?

A. It is due in those circumstances to an increase in the temperature around the joint. Usually a person who has rheumatoid arthritis has a swollen joint which does not have an increase in temperature. If it is an acute phase then you may have marked swelling and you may have, in some rare instances, redness.

Q. Now, Doctor, I meant to ask you if you have read the testimony of Dr. Mayer in this record?

A. How do you spell that?

1179 Q. M-a-y-e-r.

A. I do not remember.

Q. I think I have it here. I think you have seen it, if I am not mistaken.

A. I did not read it.

Mr. Callaway: May we have a few minutes recess?

Trial Examiner Lipscomb: Recess for ten minutes.

(Short recess.)

Mr. Callaway: We have no further questions for the doctor.

Mr. Brodkey: I am afraid I will have to burden you a little bit, Doctor.

Cross-Examination by Mr. Brodkey.

Q. It is, of course, obvious, Doctor, you are here at the request of the Federal Trade Commission to testify in this cause, but I wish you would relate for the record the exact situation which transpired with respect to that request for your testimony? Tell us, mentioning names, times if you are able, and persons talked to concerning what they said?

A. Dr. Dobbs approached me and asked me if I would testify here today. This was a number of months ago; I suppose about a year or a little less. The reason that I said I would testify—those reasons are two as I think of them. First of all, I am chairman of a committee of

1180 the Rheumatism Association which has been formed to try to evaluate the various drugs and medications and forms of therapy treatment of arthritis and rheumatic diseases. Secondly, I am a great believer that the progress of arthritis in a whole group of arthritis patients can be stopped in about 80 per cent of those patients. Various statistics which we have taken bear me out. Now, if I can see a patient very early, when the signs and symptoms are

few, and if I can stop them then, I can do a better job than if a person should happen to go to a drugstore or have a physician—

Q. Doctor, I neglected to tell you it might be necessary to interrupt you, which I dislike doing personally, but still I think you will recognize, will you not, that in relating your reasons for accepting the solicitation of the Federal Trade Commission to testify here I did not ask you what your reasons were but to relate rather the circumstances surrounding that request, what was said by the parties who made the request, and so forth. You see, I am going to have to ask the Trial Examiner to strike that portion of your testimony which goes to your motive in offering it, you see. That is solicitation of opinion which, of course, I didn't ask for here at all.

Mr. Callaway: I ask he be allowed to finish the answer to the question.

Mr. Brodkey: I submit it is not responsive.

1181 Mr. Callaway: I think it is responsive. I don't—

Mr. Brodkey: What part of my question does that respond to?

Mr. Callaway: I don't think you should cut the doctor off.

Mr. Brodkey: I should have cut him off sooner.

Trial Examiner Lipscomb: Gentlemen, I don't remember exactly what the question called for. It did leave the doctor, I think, considerable leeway, and the Trial Examiner is not going to cut off the doctor. He is going to permit him to complete his answer.

Mr. Brodkey: May I except Your Honor's ruling?

Trial Examiner Lipscomb: You may except.

Mr. Callaway: Do you remember where you were, Doctor?

The Witness: Yes, sir.

A. If a person has gone to a drugstore to purchase something to relieve the symptoms of a joint manifestation. That is not the way I want to see arthritic patients treated. I feel these must be considered as a whole, each person as a separate individual problem, a different problem. I feel there are other things which should be instituted—should be used in carrying on the proper kind of treatment, the best we know how today in these patients with rheumatoid arthritis or osteoarthritis and so on,

1182 and, therefore, if I can do anything to help a patient

get an outline of treatment, whether they will follow it or not I don't care, but at least they should have an outline of a complete phase of the treatment, and it did come to my attention that when they were using just a single drug, they may neglect the other things. So for those two reasons I condescended to testify.

Mr. Brodkey: I move for the record to strike that remaining portion of the answer of the Doctor, just made. It is unresponsive completely to the question propounded to him. The Doctor can simply state his answer without stating his opinion with respect to the merits or demerits of a product of that nature, unless the question calls for that.

Mr. Callaway: He asked him to relate the circumstances under which he testifies here today. Now, the circumstances under which he testifies would include his reasons for testifying, and he has given the reason for testifying, and that is what they are, and that is what he is now objecting to.

Trial Examiner Lipscomb: The Trial Examiner can see no harm in permitting the testimony to stand.

Mr. Brodkey: Do I understand I have a continuing exception?

Trial Examiner Lipscomb: You have.

By Mr. Brodkey:

Q. Dr. Lockie, are you being paid for your serv-
1183 ices here today?

A. I was notified by letter I'd be paid $25.00 for my services today.

Q. Have you requested any particular amount for it?

A. No, sir.

Q. You have, of course, written quite a number of articles here in this list of publications you submitted. There were 26 in the list of which all but two you say apply to this field?

A. I believe that is right.

Q. Arthritis and rheumatism. In some or more, I expect, you may have expressed your viewpoints similar to the ones you just expressed here which you heard us quibble about, is that right?

A. I don't think I made just those remarks.

Q. Something connected with it, perhaps?

A. I think that is true.

Q. Now, of course, we don't have to be at all technical

here when we discuss such terms as pride of authorship, you know what we mean by that?

A. Yes, sir.

Q. And you, of course, have theories underlying all these things, do you not?

A. Yes, sir.

Q. Do you feel, Doctor, that there is such a thing
1184 as pride of authorship in testifying in a case of this kind to adhere to theories you may have announced before this point?

A. Yes, sir, according to my principles.

Q. Yes. So there would be an inclination on your part to sustain those theories if you could, having previously announced them?

A. I realize I am under oath. I don't think I would ever intentionally say anything which I don't sincerely believe to be true.

Q. Well, I have no doubt of that, Doctor, but, of course these things, sometimes play on the unconscience or subconscience within a person and the motivating forces of price of authorship, wouldn't you agree?

A. I must know more before I can say—yes, I'll agree with you, sure.

Q. Now, you have been asked quite a number of questions from time to time in which reference has been made to salicylates as such. You have been asked to express your opinion with respect to the use of salicylates under varying circumstances. To what salicylates do you refer? The entire group?

A. To two in particular, those with which I am the most familiar. One of them is acetylsalicylic acid, which is aspirin, and the other one is sodium salicylate. I have had no personal investigative experience with manganese salicylate.

Q. Now, do you know the product here under in-
1185 vestigation called Imdrin?

A. Yes, sir.

Q. What is the extent of your acquaintance with it?

A. Well—

Q. Without going into a great deal I wanted to know what you may have done with it?

A. First of all I purchased a package of Imdrin when it came on the market and I looked at it. I tried to get the formula for it and did, and my friend Bob Stecher from

Cleveland talked to me, we talked of its merits, and then I was aroused by Dr. Stecher's interest in following along the remarks of patients who had taken Imdrin as a means of controlling pain.

Q. I will ask you, of course, not to attempt to refer to anything which these patients may have told you or anything of that kind. That, you recognize, is what we commonly call hearsay.

A. And so my interest has ended there. I am sorry, I have not prescribed it or suggested it to anybody.

Q. Do you know its quantitative and qualitative formula?

A. I have in my notes the formula, both quantitative and qualitative.

Q. Do you know if by memory or depending on notes?

A. I would much rather depend on notes, but I know approximately what is in it.

1186 Q. What do you think is in it?

A. First of all we have manganese salicylate, you have some succinate in it, you have thiamin hydrochloride in it and there is one or maybe two more items in it.

Q. The quantity you don't remember as you sit here now, is that right?

A. On the package it is one milligram of thiamin hydrochloride. I have the formula in my notes.

Q. You don't remember it right now, do you?

A. No, sir.

Q. Have you ever prescribed Imdrin for any of your patients?

A. No, I said I didn't.

Q. Have you ever prescribed a combination of drugs identical with what is in Imdrin, whether by name or any other?

A. It has been my teaching and my firm belief that if medicine is to be used—medication—it should be used as a single drug. I am not convinced there are many meritorious actions. I am a fellow who will use one drug and use it alone, and so I have not prescribed combinations.

Q. No combinations ever?

A. Not similar to Imdrin.

Q. Yes. Of course, you wouldn't know from your own personal observation what such a combination might or might not do, would you?

1187 A. My personal observation is based on what was told me by a number of patients who have taken it.

Q. We can't refer to—

A. That is a personal observation.

Q. No, I am sorry to dispute that with you. What is told you by a patient, of course, is hearsay, Doctor. I don't wish to argue but that is a legal concept with which most of us are familiar.

Mr. Callaway: I think he has a right to state that.

Mr. Brodkey: State what, Mr. Callaway?

Mr. Callaway: What he understands to be the effect of Imdrin.

Mr. Brodkey: I haven't asked any question that sounded anything like that.

Mr. Callaway: What his patients have told him and what he observed from patients.

Mr. Brodkey: Did you hear me ask him what his patients thought, Mr. Callaway?

Mr. Callaway: That wasn't the question.

Mr. Brodkey: That is why I wanted to confine the Doctor to the questions which I am propounding here in this examination.

Mr. Callaway: Wait a minute, you interrupted me several times when I was examining the Doctor. I
1188 wish you'd go back and read for us Mr. Brodkey's last question to the Doctor, if you please.

(The reporter read the question as follows:

"Question: Of course, you wouldn't know from your own personal observation what such a combination might or might not do, would you?")

Mr. Brodkey: I submit that can be answered yes or no.

Mr. Callaway: That would take in his observations of patients who have taken Imdrin, and he says he has had occasion to observe them. I suggest that he be allowed to give his information.

Mr. Brodkey: Mr. Callaway, are you conducting this examination or—

Trial Examiner Lipscomb: Gentlemen, off the record.

(Discussion off the record.)

Trial Examiner Lipscomb: On the record.

Mr. Brodkey: I think I am going to save a lot of confusion here by simply withdrawing the question.

Trial Examiner Lipscomb: All right, sir.

By Mr. Brodkey:

Q. Did you ever make tests on live human beings with Imdrin?

A. Yes.

Q. You made such tests? Do I understand that you prescribed Imdrin?

1189 A. I let the patient take it once they started it to follow them along. I had not initiated the project but I watched them with interest over a period of several weeks.

Q. What you mean is simply you didn't stop them, is that all?

A. Yes, sir, I watched them with interest to know what it would do. I call that a test.

Q. Well, I suppose there might be a little difference in viewpoint among us as to what is to be regarded as a test. At least that isn't the type of test I had in mind, Doctor. It is true, as you have stated twice now, I believe, that you never prescribed it yourself?

A. That is correct.

Q. Now, the various opinions which have been given by you here this afternoon, Dr. Lockie, would your answers to all of these questions propounded to you have been the same had these questions been asked you, say, ten years ago?

A. That would be 1941.

Q. Only if you prefer a different period of time?

A. I do not believe that our knowledge of the pathology of the joints in these various form of arthritis has changed in ten years. I do not believe that we have additional evidence with the mechanism of salicylates to change the answers which I gave to this phase of salicylate therapy. I think I would have answered the same way ten years ago.

1190 Q. Or any other period of time, assuming we went back longer than ten years?

A. Oh no, I'd change my mind.

Q. Your answer would have been different?

A. 25 years.

Q. 25 years ago?

A. Yes, sir, because I didn't know so much about it, I wasn't as familiar with the material.

Q. Would you have then given your opinion, say 25 years ago, with the same degree of assurance and believe as you are giving it here today?

A. No, sir, because I was not an expert then.

Q. Doctor, during the period of time since you have

regarded yourself as an expert in these matters have you had occasion to change these opinions upon any theories you may have had?

Mr. Callaway: That is generally, are you talking about?

Mr. Brodkey: Any of them at all.

Mr. Callaway: I object to that because that is not in the scope of cross-examination.

Mr. Brodkey: With respect to the effectiveness of any of the commodities we are here discussing.

Mr. Callaway: Wait a minute, it wasn't out 25 years ago.

By Mr. Brodkey:

1191 Q. Have you had occasion, Doctor, to change your opinion with respect to any phase of rheumatism or arthritis and the treatment thereof within the past, say, ten or fifteen years?

A. Yes, sir, many.

Q. Many. Before you changed your opinion on any one of those occasions, could it be safely said you were fairly assured of your then position before changing it?

A. I believe I practiced what I believed.

Q. Yes, I have no doubt of that. And, therefore, if you believed a given thing at the time, that was your opinion, was it?

A. Yes.

Q. You had occasions afterward, you did change it?

A. Yes, sir.

Q. In view of that past experience of yours haven't you observed certain amount of doubt concerning these theories upon which you and your colleagues have worked for some time, isn't that a professional attitude?

A. I believed it until I am shown otherwise.

Q. Doctor, do you ever prescribe any medication for relief of pain attendant upon various forms of rheumatism and arthritis?

A. Yes, sir.

Q. What do you prescribe? It can be a general answer.

1192 A. Well, it is a long story, but briefly, I feel the prescription pertains to many things, not alone drugs. If you wish me—

Q. I confined my question to drugs?

A. Drugs alone—I do, and I usually tell a patient that if medication is desirable for relief of symptoms that salicylates in my mind are by far the best for them to use. I feel that it centrally lessens the consciousness of pain around joints, of discomfort around the joints. It makes them able to do things which in the mild and moderate cases they may not have been able to do as well.

Q. And that is desirable, is it?

A. Yes, sir.

Q. So then in any case, with but the usual professional exceptions which scientific men always seem fit to make, it can be generally stated it is desirable to have this relief from pain?

A. I think it is a very important part of a general plan of treatment.

Q. Yes. Why do you feel that it is good that a patient be relieved of his pain?

A. I think a person who is relieved of pain or partially relieved of pain and discomfort it's a situation to be desired. He is happier and the doctor is happier. I don't believe it has an effect on the fundamental process 1193 but it is a part of the whole picture.

Q. Well, can we suppose a case where a patient has a joint that hurts, affected with some form of rheumatism or arthritis, and for that reason the joint is, shall we say, difficult for him to make mobile because it hurts him when he does. If that pain is relieved would he then be able to move the joint?

A. It depends on the type of arthritis and the severity of it.

Q. Assume—

A. If it's a—

Mr. Callaway: Let him answer the question.

By Mr. Brodkey:

Q. Continue, Doctor?

A. If it is a mild case and we are not doing damage to the underlying process by allowing a person to work under camouflage, just so they can be more comfortable, I think that is to be desirable. I do not feel that if we have an acute joint and a person goes out and forces himself to be able to, by giving a salicylate, that wouldn't be good, and in those cases I wouldn't be as anxious to have them use salicylates. I would give them enough to relieve the pain but not to step beyond the bounds of

where they may be harmed or harm done to the joints by using it too much.

Q. But you do feel that except in exceptional
1194 cases it is advisable for him to be put in a position so he can mobilize the joint, is that right?

A. Yes, sir, if it is possible.

Q. And, I am not certain whether you were asked the question as to the number of cases of rheumatism and arthritis—it is my impression that you were only asked the number that you treated?

A. That is right.

Q. The total came to either eight or twelve thousand, depending on how you figured it out?

A. Yes.

Q. Did you mean you had treated all those cases yourself?

A. I have seen each one in my office over 20 years' period.

Q. What do you mean by seeing?

A. I have outlined the plan of treatment for that individual in the beginning.

Q. Individually?

A. Yes, sir.

Q. And then didn't follow through with him as an individual thereafter?

A. If it were a consultation, naturally the family doctor would follow it through. If this person were in a clinic where there are others working, I would delegate where that person should go, or to return to me. But, most of these patients here I have seen, outside of the con-
1195 sultations, an average of five or six times minimum, many of them running into the hundreds of visits.

Q. Certainly from that observation you should be able to tell something about the prevalence of these various conditions, should you not, without respect to the number. Could you not, for example, tell us what percentage of all persons you have observed who happen to be afflicted with rheumatism or arthritis were ambulatory, could you tell us?

A. In the beginning of my practice in medicine a fairly high percentage of patients I saw were bed-ridden patients, often a derelict who had been there for many, many years. As teaching has gone along during these 20 years, now by far most of these people I see are ambulatory. In fact, almost all of them, except in hospitals.

Q. Is it not a fact that of those patients suffering from rheumatism or arthritis who come to your attention most of them are perhaps in worse condition than those who consulted their family physicians from time to time before coming to you, or those who, perhaps, don't even consult a physician at all? You see the worst of them?

A. I see the problems.

Q. The problems?

A. Yes.

Q. And yet from your experience in recent years you would say the overwhelming majority, nearly all of
1196 them, are ambulatory or suffering, from cases which are fairly mild?

A. I wouldn't say fairly mild; they are ambulatory.

Q. Well, could we say that of all the cases in the country, whether they come to you or any of your colleagues, or don't go to anyone, that the overwhelming majority of them are suffering from mild forms of rheumatism?

A. No.

Mr. Callaway: Objection. That is—

By Mr. Brodkey:

Q. That is not true?

A. No, sir, not the ones I see.

Q. On the basis of your observation, without respect to the ones that you treated yourself, do you know how many of all the cases in this country are mild in form?

Mr. Callaway: Just a minute, objection.

Trial Examiner Lipscomb: Objection sustained.

Mr. Brodkey: What is the basis of that objection? I am asking if he knows how many of all the people who have rheumatism and arthritis are suffering from it in a mild form.

Mr. Callaway: There is no way for the man to know—

Mr. Brodkey: If he doesn't know he can tell us.

Mr. Callaway: There is no way for him to know the figures on the number of cases of arthritis in the country.

1197 Mr. Brodkey: He may be familiar with statistics or something else. Let him answer.

Trial Examiner Lipscomb: The objection has been sustained.

By Mr. Brodkey:

Q. Do you not know as a fact that of the very many cases of rheumatism and arthritis in this country almost all of them are minimum cases?

Mr. Callaway: I object to that.

Trial Examiner Lipscomb: Objection is sustained.

Mr. Brodkey: Well, I submit, Your Honor, that despite the rulings which have been made on this series of questions I am totally at a loss to perceive wherein it is improper to interrogate this witness as to the extent of his knowledge, however derived, from his practice or from any other source with respect to the prevalence of advanced stage cases. I can see no objection to it possibly.

Mr. Callaway: It is our understanding—

Mr. Brodkey: I should like to be acquainted with the nature of that objection.

Mr. Callaway: It is our understanding the doctor can testify about his own knowledge, he can testify about his own experience, but he cannot testify about the experiences of others, and your questions would include the experience of others.

1198 Trial Examiner Lipscomb: Also a wholesale understanding and the knowledge of conditions throughout the country, no man in the opinion of the Trial Examiner could have that knowledge. Therefore, it would call for a great deal of hearsay. It must be hearsay. Therefore, it is my opinion it is objectionable and therefore, I have ruled.

By Mr. Brodkey:

Q. Doctor, do you know whether or not there is any statistics on the number of cases of rheumatism of all kinds and types?

A. Yes, there are such statistics.

Q. Are you familiar with any of them?

A. I have read those reports.

Q. From what sources do they come?

A. From the American Rheumatism Review.

Q. Do those include, let us say, the total number of cases of people who are afflicted with rheumatism and arthritis?

A. It makes a deduction based on surveys.

Q. Could you just briefly tell us the nature of that deduction, whether it statistically enumerates the number of cases, or just what it does do?

A. As I remember, it is based on one large survey in the State of Massachusetts in which they used that as a cross section for the entire country, and by multiplication arrived at a figure in which they estimated a certain
1199 number of people in this country had arthritis or rheumatic diseases sufficient enough to make them go to a doctor for attention at some time.

Q. Do such statistics include cases of those who may not have gone to doctors?

A. No remark was made in any of the reviews that I read.

Q. Do you have an opinion as to the number who do go to doctors as compared to those who do not?

Mr. Callaway: Objection.

Trial Examiner Lipscomb: Objection is sustained.

Mr. Brodkey: He may have such an opinion, Your Honor.

Trial Examiner Lipscomb: It is not admissible, I wouldn't admit it if he has, it would be clearly a guess. He cannot know outside of his own practice, his own experience, he cannot know nationwide conditions.

Mr. Brodkey: Well, I should think that if any one could this doctor could, and I can't conceive of a situation in which no one would be permitted to express an opinion with respect to prevalence of a given condition. Is that improper, Your Honor, for an opinion testimony?

Trial Examiner Lipscomb: Off the record.

(Discussion off the record.)

Trial Examiner Lipscomb: On the record.

Mr. Brodkey: May I except to Your Honor's sev-
1200 eral rulings on questions propounded to this witness by these Respondents, touching upon an attempt to elicit from Dr. Lockie his opinions or knowledge with respect to the prevalence of rheumatism throughout the country and its severity or lack of it.

By Mr. Brodkey:

Q. I should like to ask you just one question relating to your testimony on the various societies and organizations to which you belong. If I remember your testimony it was to the effect that you were a member and had served on committees of the American Rheumatism Association?

A. Yes, sir.

Q. And I think you mentioned one newly formed committee, had something to do with editing or something of that nature, am I right? What did you call it?

A. May I straighten that out for you? There are three committees of which I am a member. The one for which I am chairman is the Evaluation of Drug Therapy in arthritis and medical diseases.

Q. What is that committee called?

A. Called that.

Q. That is its name?

A. Yes. Secondly, I am on the editorial board, that is, a committee composed of six, seven or eight of us who annu-

ally or less often abstract all the literature, medical
1201 articles perhaps, and we put out an article under the

auspices and heading of the American Rheumatism Association called the "Rheumatism Review" which is a nice biography and condensation of new material. The third committee is that of Public and Press Relations.

Q. That is the last one you mentioned?

A. That is the last one.

Q. Public and Press Relations. What is its job?

A. I know exactly as much about it as the title infers. We have not had a meeting, but I am on that committee. That is the only reason it was mentioned.

Q. You say you have not had a meeting?

A. No, sir. I understand that it is going to be a means of disseminating education in the field of arthritis, of showing films to public gatherings where they can go in and see what rheumatoid arthritis may be and its symptoms, the pathology—how they look, what the different forms of treatment may be for it.

Q. Do any of these committees have as a part of their program or objective the dissemination of information designed to discourage the use of proprietary medicines in the treatment of rheumatism and arthritis without reference to physicians, is that part of the program?

A. Not that I know of.

Q. You would know if it were true, except I sup-
1202 pose with the last committee, is that true?

A. Yes, sir.

Mr. Brodkey: I believe that is all, Doctor.

Mr. Callaway: May we have a few minutes recess?

Trial Examiner Lipscomb: We will take a five minute recess.

(A short recess was taken.)

Trial Examiner Lipscomb: The hearing will come to order.

Redirect Examination by Mr. Callaway.

Q. Doctor, some mention was made in your cross-examination of salicylates for the symptoms or discomfort of arthritis. What symptoms did you have in mind in that?

A. I had in mind the discomfort—the aching that a person has.

Q. The only symptoms would be pain and aching you had in mind at the time?

A. Yes, sir.

Q. Now, Doctor, do salicylates make the joints more mobile?

A. No, sir.

Q. They do not?

A. No. Salicylates may make a person less conscious of discomfort in moving a joint but it won't make that joint move further than it could before.

1203 Q. Now, I believe you stated something about you had observed patients who had taken Imdrin and had observed the effects of Imdrin. Could you compare for us from your observation on those patients in regard to those who had taken Imdrin and those who had taken salicylates?

Mr. Brodkey: Well, I must interpose an objection to that. I see no basis for any comparison unless the Doctor testified he has observed they have taken both or something of that kind.

Mr. Callaway: He says he has given salicylates.

Mr. Brodkey: He wasn't referring to the same patients.

Mr. Callaway: No, I understand—

Mr. Brodkey: What basis for comparison has he?

By Mr. Callaway:

Q. Doctor, have you given salicylates to patients were arthritic conditions?

A. Yes.

Q. Have you observed the effect of Imdrin on patients who had taken Imdrin?

A. Yes, sir.

Q. That is the basis of the comparison—

Mr. Brodkey: My objection still obtains. There is no showing at all suggesting it was the same patients. What basis of comparison have we when you are talking

1204 about one patient who takes one thing and another patient who takes something else.

Mr. Callaway: I am asking him to compare the two.
Mr. Brodkey: There is no basis for comparison.
The Witness: I have seen the action of both in the same patient.
Trial Examiner Lipscomb: Proceed then to answer the question.
A. My interpretation of that observation was that Imdrin acted in the same manner as aspirin.

By Mr. Callaway:

Q. Now, Doctor, there was a question asked you about —I believe you said in answer to a question, that in your current practice the majority of patients you saw were ambulatory. Doctor, just what did you mean by that? Are such patients crippled?
Mr. Brodkey: I am afraid I missed that question or some part of it. Do you mind restating it or have the record read?
Mr. Callaway: Will you read it please.
(The reporter read the last question.)
A. Ambulatory, according to my own interpretation, means a person who is able to get about, anybody who is able to walk, with or without mechanical aids is ambulatory. A person may have a very advanced
1205 severe arthritis and struggle with two crutches or a cane and a crutch, have 90 per cent of the joints involved and still walked from one end of this room to the other, or downstairs to my office. That is what I mean by ambulatory.
Mr. Callaway: I believe that is all.
Mr. Brodkey: One or two more questions, Doctor.

Recross Examination by Mr. Brodkey.

Q. Of those persons you have just described as ambulatory case, ambulatory means those who could walk, I understood you to say that you meant walk without any artificial means and such, wasn't that right?
A. No, sir, I am sorry.
Q. Ambulatory by your definition means even if they could use crutches or canes or something of that kind?
A. Yes, sir.
Q. Well, then, perhaps we should ask you of all the cases you have seen, what percentage of them get around, can walk, and the like, and go about their affairs in a more or

less normal manner, like working daily and things of that nature, without the aid of these crutches and canes?

Mr. Callaway: That would purely be an estimate as I understand.

Mr. Brodkey: Surely.

A. I never read any statistics nor have I thought
1206 of that question coming to my attention before, so let me think for a second or two. This is an approximation.

By Mr. Brodkey:

Q. Of course.

A. To the best of my ability on the spur of the moment, I would say that one-third of the patients I have seen are ambulatory, only with considerable discomfort—people who can't do a full day's work, could not carry out a full day's job under ordinary circumstances, a housewife could not do all of the things which she would be expected to do—at least a third of all the patients would fall into that category. Now, others would have manifestations of arthritis perhaps in the upper extremity which would allow them to go about as they would want to. Now, I come back to that one-third I'd say have a Grade 3, or not a Stage 3 and Class 3 involvement.

Q. What do you mean by Grade 3 or Class 3?

A. It's a classification by which we go by in the American Rheumatism Association that defines certain limitations, and we are trying to have everybody use the same terms, not to say mild, moderate and severe. We want to have it more specific, as in the American Heart Association. They can do certain things or their laboratory x-ray studies show certain things.

Q. How many of such classes did you find?

1207 A. We have four such classes.

Q. Which ones are the severest cases—one or four?

A. Four.

Q. Four are the severest?

A. Four—totally incapacitated classification. Class 3 is one markedly handicapped.

Q. What persons would you say fell into Class 4?

A. Again I must approximate, and I would say maybe eight per cent, something like that.

Q. Eight per cent are what you call disabled?

A. Totally disabled.

Q. 92 per cent then, by your approximation, would fall into the other three classes?

A. Other three classes.

Q. And your observations in that behalf are confined to the patients who have come to you as a doctor for advice and treatment?

A. That is correct absolutely, just that group.

Q. Would you know whether that was a fair representation of a cross section of the country as a whole, including those who did and those who did not go to doctors?

A. I cannot answer.

Mr. Callaway: That is the same thing he was on a little while ago, and the objection was sustained to it.

By Mr. Brodkey:

1208 Q. When you testified a moment ago that in your observation and your analysis of that observation Imdrin acted the same as aspirin, what did you mean by that?

A. To relieve the discomfort and aching.

Q. Yes. Were you able to evaluated the degree of relief in such a comparison?

A. I think that is too variable. I couldn't honestly state.

Q. When you testified that the use of salicylates did not in your opinion make joints more mobile, I believe you added that you meant mobility in the sense of limitation of motion which the joint then had physically, was that not true?

A. That is right.

Q. So that if a joint were not completely immobile but partially so due to the pain, I think you'd recognize that as an immobility too, would you not?

A. You have to discount pain when you are doing range of motion of a joint.

Q. I see what you mean.

Mr. Callaway: I don't know whether I do or not.

By Mr. Brodkey:

Q. Did you want to add anything to it? All right, I will ask another question on the point. It is a fact there is limitations as to range of motion which are strictly physical in that the joint simply won't go any farther, is that right?

A. Yes, sir.

1209 Q. But there are many cases in which a patient, because he suffers pain, will refuse to move the joint further or favor it whatever if you want to call the term, is that not true?

A. That is right.

Q. You don't classify that as a limitation of motion scientifically, is that right?

A. No, sir.

Q. A patient whose pain was relieved, however, could increase his mobility of joint without respect to your scientific definition of mobility and the manner which I described?

A. I think he would be moving through the same range of motion but with less discomfort. I don't think—I mean, that it will not increase the range of motion, but a person with salicylates will be able to do it in many instances with less.

Q. That is what I mean, he will be able to move his member, move the joint, to a greater degree perhaps than he could otherwise because he didn't wish to, because it hurt him, is that right?

A. He can't—

Mr. Callaway: I am afraid that is an improper notation.

A. Again I have to say that a person who has a limitation of range of motion that salicylates will not improve that range of motion but will make him less conscious

1210 of the pain and discomfort and will allow him to move it through that same range of motion under the favorable effects of salicylates.

By Mr. Brodkey:

Q. Has it not been your observation that persons, consciously or subconsciously, on account of pain will not move their members through complete ranges of motion that they have?

A. Yes.

Q. That is what we call in the vernacular favoring something, isn't it?

A. Yes, sir.

Q. And, they will be able, of course, to move it through that entire range if that discomfort is eliminated?

A. Yes, sir.

Mr. Brodkey: I believe that is all, Doctor.

Further Redirect Examination by Mr. Callaway.

Q. Doctor, have you seen cases in which salicylates—where the pain was so severe that salicylates had practically no effect upon them?

A. Yes, sir.

Q. And, in those cases, of course, the patient would, I take it, refuse to move the joint as much after taking salicylates as they would before?

A. Yes, sir.

Q. Now, are there other cases, Doctor, in which
1211 salicylates may dull the pain?

A. Yes, sir.

Q. Without giving complete relief?

A. Yes, sir.

Mr. Callaway: I think that is all.

Further Recross Examination by Mr. Brodkey.

Q. Would you attempt professionally to classify degrees of pain?

A. No, sir.

Q. Too nebulous?

A. Can't do it.

Q. Except perhaps the extremes?

A. Yes, sir.

Q. But I think you said that you prescribed salicylates very frequently yourself?

A. I did.

Q. For relief of pain?

A. Yes, sir.

Q. From your observation does it relieve pain most of the time?

A. I think it helps in most instances.

Mr. Brodkey: I think that is all.

Mr. Callaway: That is all.

Trial Examiner Lipscomb: We will have a few
1212 matters to go into, but we will first excuse the Doctor.

(Witness excused.)

Trial Examiner Lipscomb: Off the record.

(Discussion off the record.)

Trial Examiner Lipscomb: On the record.

Mr. Callaway: I want to state at this time that th hearing today concludes the presentation of re . ev dence, and I want to ask that the taking of testimony this case be closed, and the Trial Examiner set such re sonable time for the filing of proposed findings as he ma think proper.

Mr. Brodkey: Statement of counsel for The Respon ents is not to be interpreted as any answer to the for going statement of counsel for the Commission. Befo we last went on this record counsel for Respondents mad known to the Trial Examiner herein his desire to take a ditional testimony at the conclusion of the Commissi case on rebuttal by way of rejoinder through sur-rebutt processes, this to consist of evidence of persons to be take in Chicago, of high professional standing, who would lim their testimony to comments upon the opinions heretofo expressed on the rebuttal of this case, particularly th opinion of Dr. Robinson in Ann Arbor, Michigan. To th end it is requested that an additional hearing be held Chicago, Illinois, on a date agreeable to the Trial E aminer, for the purpose of taking such addition 1213 testimony.

Trial Examiner Lipscomb: The Trial Examin is of the opinion that the proposed—

Mr. Callaway: May I say something else there befo you pass on that, Your Honor?

Trial Examiner Lipscomb: On the record?

Mr. Callaway: Yes. I want to strongly and strenuous object to any hearing for the taking of rebuttal testimon being set. The testimony of Dr. Robinson and of D Lockie today was directed absolutely to the testimony to the points raised in the evidence of Respondents' wi nesses in this case. It was even directed to the testimon given by Respondents' witnesses to the exact pages, an the testimony was clearly rebuttal. No new matters hav been brought out, and, therefore, there is no grounds fo any sur-rebuttal now.

Mr. Brodkey: There is a two-fold statement to be mad concerning the last remark of Mr. Callaway. It is, firs strictly on the basis of the record of Dr. Weisberg's te timony the Respondents should be permitted to addu evidence, if they can, designed to show that the opinion expressed by Dr. Robinson with respect to the diagnos of Dr. Weisberg are unfounded, and that those diagnose

in fact, were well founded on the record. And, secondly, that in the hypothesis employed to elicit the opinions
1214 of Dr. Robinson no sufficient reference was made to the entire basis for the hypothesis of Dr. Weisberg in making his diagnoses. That is what we now intend to show.

I submit further there is no reasonable cause for believing that when Respondents put on their case in chief they were apprised of the possibility of rebuttal evidence designed for this purpose, and should be permitted to answer the net effect of that rebuttal evidence. They were not, in short, required to anticipate such rebuttal.

Mr. Callaway: May I ask you a question, Mr. Brodkey?

Mr. Brodkey: Surely. You want it on the record?

Mr. Callaway: Yes. When you put in evidence in the Defendants' case in chief were you not required to anticipate that we would put on rebuttal evidence?

Mr. Brodkey: I think not for the content of the rebuttal, couldn't possibly.

Mr. Callaway: You mean to say that just because we put on rebuttal testimony that that entitles you to sur-rebuttal. That is giving you the last word in the case in which the burden is upon us.

Mr. Brodkey: It is very customary to have sur-rebuttal to the extent of new matter—

Mr. Callaway: But we didn't introduce any new matter.

Mr. Brodkey: Yes, you did.

1215 Mr. Callaway: Where?

Mr. Brodkey: The opinions of a doctor with respect to the opinions of another doctor who had gone before. I think we should be able to introduce evidence touching upon the opinions of your rebuttal doctor.

Mr. Callaway: My rebuttal doctor didn't pass upon the opinions of your witness.

Mr. Brodkey: He didn't?

Mr. Callaway: My rebuttal doctor merely took what the record said, what Dr. Weisberg had said in the record, as the basis for his diagnosis, and my rebuttal doctor said that on the basis of those things in the record that in his opinion—

Mr. Brodkey: Which you enumerated.

Mr. Callaway: He read the record. No accurate diagnosis could be made. I don't see that calls for a sur-rebuttal. You'll never get through.

Mr. Brodkey: I think there is a little question, but what this amounts to is admitting new evidence on which there is no opportunity to answer. We had a Dr. Weisberg testify. When you say he didn't testify to his opinion, I submit that his diagnosis is part of his opinion, must be predicated upon proper means. Those means appear in the record in various parts. Counsel for the Commission undertook to enumerate their effect and in-
1216 terpretation as he understood them in his hypothesis, but even on that basis of that hypothesis we believe there are those who disagree with the position taken by Dr. Robinson.

Mr. Callaway: On the basis of what Mr. Brodkey has said I would suggest that the Trial Examiner not pass on Mr. Brodkey's motion at this time but himself examine the record to find out whether there was any new matters introduced into this case in this rebuttal testimony. If there were no new matters introduced and the Trial Examiner is of that opinion, then he is not entitled to his sur-rebuttal testimony. If there were new matters introduced then he is entitled to sur-rebuttal testimony. I tried my best to confine it clearly to rebuttal, and I think that can only be clear in the Trial Examiner's mind as to whether it was rebuttal or not when he reads that portion of the record to see.

Mr. Brodkey: Counsel seemingly fails to take cognizance of the fact there is such a thing as sur-rebuttal designed to go into matters introduced by way of rebuttal, assuming that it is properly within the scope of rebuttal. Therefore, regardless of whether or not new matter is introduced by way of rebuttal, there is the device known as sur-rebuttal for the purpose of attacking just that matter properly brought in by way of rebuttal, so regardless of whether or not the matter he introduced as re-
1217 buttal was proper, there should definitely be an opportunity to answer it.

Mr. Callaway: With the burden on the attorney supporting the complaint—

Mr. Brodkey: That burden of persuasion attaches to the Commission throughout.

Mr. Callaway: Yes. And what you are saying is the man that doesn't have the burden should have the last say which he doesn't have according to legal principles.

Mr. Brodkey: That is not right. You don't want us to believe you think that, do you?

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Mr. Callaway: It would only go to new matter.

Trial Examiner Lipscomb: I don't want to cut you gentlemen off from further distort—

Mr. Brodkey: I think you should, Your Honor. After all, we are just repeating here.

Trial Examiner Lipscomb: I would like for you to come to a conclusion.

The Trial Examiner will take under advisement the request for a hearing on behalf of the Respondents in Chicago and rule thereon in a few days. In the eventuality that he declines to grant the hearing, he will fix a date on or before which both the attorneys for the complainant and the counsel for the respondents may submit proposed findings as to the facts and conclusions. Because of that eventuality, what would counsel say as to a con-
1218 venient date, should I so rule? I want to give you ample time, and yet I would like the proposed findings as soon as I can after the presentation of testimony.

Mr. Brodkey: In such eventuality, I assume that we may have an exception to any such ruling, and I assume further that Your Honor in saying that you will take this matter under advisement has not arrived at such conclusions as the reference to a possible date would seem to indicate, since Your Honor did not make the statement in the alternative.

Trial Examiner Lipscomb: The Trial Examiner has no desire to be evasive. He is of the present opinion that counsel for the Respondents is not entitled, but he is going to look into the matter and consider it and give it an honest opinion, and that he does not question or challenge by any man. The mere fact I do feel so inclined, does not mean he may not arrive at a different opinion.

Mr. Brodkey: Very well, Your Honor. In such event—

Trial Examiner Lipscomb: But I would like to speed—

Mr. Brodkey: Such reasonable date as meet Your Honor's convenience in a case of this type and which would be satisfactory to all parties concerned.

Mr. Callaway: My suggestion would be 30 days.

Trial Examiner Lipscomb: All right, gentlemen. I
1219 will be guided by that. I will not fix a date, in the event I overrule Respondents. Anything further to come before this hearing, gentlemen? I might ask this further question. If, in the event that I should see fit to find proper—to grant your request, when would you wish the hearing held?

Mr. Brodkey: On any date, subject to change of a da one way or another that Your Honor finds convenien There is always that possibility, without consulting a ca endar which I don't have with me, that the particular dat might be taken, but certainly the length of time is no too material.

Trial Examiner Lipscomb: That statement is appre ciated and quite satisfactory.

The hearing is now adjourned.

(Whereupon, at 4:30 p. m., October 16, 1951, the hearin in the above matter was adjourned, date to be fixed by th Trial Examiner, if necessary.)

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In the

United States Court of Appeals

For the Seventh Circuit

No. 10748

RHODES PHARMACAL COMPANY, INC., ET AL.,
Petitioners,

vs.

FEDERAL TRADE COMMISSION,
Respondent.

Petition for Review of Order of the Federal Trade Commission.

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244 COMMISSION'S EXHIBIT NO. 1.

Rhodes Pharmacal Company
Imdrin

Opening.

Announcer: The next portion of the (Name of Program) is brought you by the Rhodes Pharmacal Company, makers of Imdrin. In a moment I'll be back to tell you folks who have been suffering from arthritis, sciatica, rheumatism and neuritis news about Imdrin . . . the Brand-new, safe and reliable way to cure pain that's being prescribed by many doctors to bring quick, pleasant relief from arthritis pain, stiffness, and swelling.

245 COMMISSION'S EXHIBIT NO. 2.

November 19, 1948.

Imdrin—3rd Revised

Commercial #1.

Announcer: If the misery of rheumatic and arthritic pains have been driving you to distraction—if you are plagued day after day with tormenting aches, swelling and stiffness, then you know how much discomfort and torture such conditions can cause, and how hard it is to get your proper rest at night. But did you know that all this agony may be unnecessary? If these unendurable aches and pains are due to rheumatism, start now using safe new Imdrin for quick relief! (Pause.) You've read about the wonders of sulfa and penicillin! But you may never before have heard about I-m-d-r-i-n, Imdrin, the brand-new, safe and reliable way to curb pain that is being prescribed by many doctors to bring quick, blessed relief from arthritic pain, stiffness and swelling. Imdrin contains a remarkable research discovery! . . . that not only stops pain, helps reduce swelling, but acts to uncork the joints! Thus clinical reports prove that people who have suffered from arthritis, sciatica, rheumatism and neuritis up to 20 years have been eased of pain often in 48 hours, sometimes overnight . . . without taking habit-forming or dangerous

drugs! Users of Imdrin report that they have resumed normal living. For them the aching joints and muscles are a thing of the past! Profit by the experience of many others. Get Imdrin . . . from your druggist today. Insist on Imdrin . . . I-m-d-r-i-n . . . Imdrin . . . to relieve pain and discomfort caused by arthritis and rheumatism!

246 COMMISSION'S EXHIBIT NO. 3.

Imdrin-3rd Revised November 19, 1948

Imdrin Radio Test!

Announcer: #2: If life just hasn't seemed worth living because of distressing arthritic and rheumatic pains, there's still glorious new hope for you! . . . Try Imdrin, the new, safe, easier way which folks from coast to coast who suffered just as you do, tell us has brought them speedy comfort and prolonged freedom from pain. Imdrin Tablets are easy to take. Instructions come with each bottle. Most important, Imdrin is unlike anything else you've ever known . . . contains an entirely new scientific discovery. No faster relief is known today! Stiffness and swelling disappear . . . often overnight! Imdrin is sold at all (Name of Chain) stores. And any independent druggist either has Imdrin or can get it at once from his wholesaler. Call for Imdrin . . . I-m-d-r-i-n. Don't delay! Get Imdrin today to have on hand at the first sign of the tortures of rheumatism, arthritis, sciatica, or neuritis.

247 COMMISSION'S EXHIBIT NO. 4.

Imdrin 3rd Revised November 19, 1948

Commercial #3.

Announcer: To everyone of you folks suffering the savage pains of rheumatism or arthritis, we ask this question: Will you take less than five minutes and invest just one cent for information which may make you Jump For Joy! Simply send your name and address on a penny postcard to Imdrin . . . I-m-d-r-i-n, Imdrin, in care of this station ..... Information will be sent you at once airmail, special delivery. We will tell you about Imdrin,

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the only tablets scientifically compounded with a remarkable new ingredient that not only stops pain, helps reduce swelling, but acts to uncork the joints . . . Imdrin, which has helped so many folks to again regain restful sleep, to resume normal occupations and once again to lead rich, active lives. Write today for your information. Remember the address . . . I-m-d-r-i-n, Imdrin, in care of this Station ..... Your druggist has Imdrin! Insist on Imdrin for prolonged relief from the pains of arthritis, rheumatism, sciatica, and neuritis. Get your Imdrin today!

248 COMMISSION'S EXHIBIT NO. 5.

Rhodes Pharmacal Co. January 4, 1949
Imdrin
Copy A

Announcer: If the agony of rheumatic and arthritic pains have been getting you down—if you are racked twenty-four hours a day by torturing aches, beset by swelling, and stiffness—then you know how such conditions can make your job seem twice as hard as it really is. Make your life miserable, while others are enjoying themselves, and spoil your rest at night. But did you know that all this agony may be unnecessary? If these unendurable aches and pains are due to rheumatism, start now using safe new Imdrin for quick relief! (Pause) You've read about the wonders of sulfa and penicillin! But you may never before have heard about I-m-d-r-i-n, Imdrin, the brand-new, safe and reliable way to curb pain that is being prescribed by many doctors to bring quick, blessed relief from arthritic pain, stiffness and swelling. Imdrin contains a remarkable research discovery! . . . that not only stops pain, helps reduce swelling, but acts to help uncork the joints! Thus clinical reports prove that many people who have suffered from arthritis, sciatica, rheumatism and neuritis up to 20 years have been eased of pain often in 48 hours, sometimes over-night . . . without taking habit-forming or dangerous drugs! Non-Toxic! Users of Imdrin report that they have resumed normal living. For them the aching joints and muscles are a thing of the past! Profit by the experience of many others. Get Imdrin . . . from your druggist today. Insist on Imdrin . . . I-m-d-r-i-n . . . to relieve pain and discomfort caused by arthritis and rheumatism!

249 COMMISSION'S EXHIBIT NO. 6.

Rhodes Pharmacal Co. January 4, 1949
Imdrin

Announcer: If you are sick and tired of suffering from distressing arthritis and rheumatic pains that spoil every waking hour and keep you awake at night, there's still glorious new hope for you! Try Imdrin, the new, safe, easier way which folks from coast to coast who suffered just as you do, tell us has brought them speedy comfort and prolonged freedom from pain. Imdrin tablets are easy to take. Instructions come with each bottle. Most important, Imdrin is unlike anything else you've ever known . . . contains an entirely new scientific discovery. No faster relief is known today! Stiffness and swelling disappear . . . often overnight! Imdrin is sold at all (name of chain) stores. And any independent druggist either has Imdrin or can get it at once from his wholesaler. Call for Imdrin, . . . I-m-d-r-i-n. Don't delay! Get Imdrin today to have on hand at the first sign of the tortures of rheumatism, arthritis, sciatica, or neuritis.

250 COMMISSION'S EXHIBIT NO. 7.

Rhodes Pharmacal Co. January 4, 1949
Imdrin
Commercial #3

Announcer: To everyone of you folks suffering the savage pains of rheumatism or arthritis, we ask this question: Will you take less than five minutes and invest just one cent for information which may make you Jump For Joy! Simply send your name and address on a penny postcard to Imdrin . . . I-m-d-r-i-n, Imdrin, in care of this station ..... Today send your information or send us your doctor's name and we will rush him full facts about Imdrin. Information will be sent at once airmail, special delivery. We will tell you about Imdrin, the only tablets scientifically compounded with a remarkable new ingredient that not only stops pain, helps so many folks to again regain restful sleep, to resume normal occupations and once again to lead rich, active lives. Write today for your information. Remember the address . . . I-m-d-r-i-n, Imdrin, in care of this station ..... Your druggist has Imdrin! Insist on Imdrin for prolonged relief from the pains of arthritis, rheumatism, sciatica, and neuritis. Get your Imdrin today!

FEDERAL TRADE COMMISSION
Docket No. 5691 Commission's Exhibit No. 8
IN THE MATTER OF Rhodes Pharmacal
DATE 9/27/50 WITNESS Pace
ELECTREPORTER, INC. Official Reporter
By Rumrack

8

Ad No. 3-48—2 in. x 42 lines

FEDERAL TRADE COMMISSION
Docket No. 5691 Commission's Exhibit No. 8

AMAZING NEW DISCOVERY FOR RHEUMATISM, ARTHRITIS

Gives Fast Pain Relief Safe...Hospital Tested

If you have been suffering tortures of rheumatic and arthritic pains, for days, months, or even years, IMDRIN with its amazing new wonder-working ingredient may very well be the answer to your problem of pain-free living. IMDRIN has been clinically tested in hospitals throughout the country. In case after case IMDRIN proved its effectiveness as one of the fastest arthritic and rheumatic pain relievers known. Even people who suffered for twenty years were able to live free of pain . . . like happy human beings once again. DON'T GIVE UP HOPE! IMDRIN works internally . . . promises you a better life. IMDRIN, is non-habit forming, proven safe when used as directed. Try IMDRIN today. If you don't agree it is the fastest arthritic and rheumatic pain reliever you've ever tried, return for money back. Get IMDRIN at your favorite drug store today . . . resume comfortable living tonight.

O'Neil, Larson & McMahon
BtrC 3456—11-12-48—2

mc Mahon Exhibit 12.

FEDERAL TRADE COMMISSION

Docket 5691

Ad No. R.A.—1-48R—2 col. x 40 lines

Rhodes

9-27-50 Rec'd

Amazing New Discovery for Rheumatic

RHEUMATISM, ARTHRITIS

NO FASTER ARTHRITIC PAIN RELIEF KNOWN!

SAFE...HOSPITAL TESTED

If you have been suffering the tortures of rheumatic and arthritic pains, swelling and stiffness for days, months, or even years, IMDRIN with the amazing new wonder working discovery may very well be the answer to the problem of pain-free living. IMDRIN has been clinically-tested in hospitals. In case after case IMDRIN proved its effectiveness as one of the fastest arthritic and rheumatic pain relievers known to medical science. Persons whose cases of suffering have been thought almost hopeless . . . yes, even people who had suffered and hoped for twenty years, were able to live free of pain . . . like happy human beings once again. No other medicine for rheumatism and arthritis thus far discovered by medical science has such an amazing record . . . and can back it up with proven hospital and clinical reports. DON'T GIVE UP HOPE. IMDRIN with amazing, new ingredient, that works internally and promises you a better life . . . is as close to you as your nearest drug store. IMDRIN is non-habit forming and proven safe. Try IMDRIN today—use as directed. If you don't agree that it is the fastest arthritic and rheumatic pain reliever you ever tried return for money back. Get IMDRIN today at your favorite drug store . . . resume comfortable living tonight.

O'Neil, Larson & McMahon—B&C 3708—11-22-48—1

McMahon Exhibit C.

FEDERAL TRADE COMMISSION
Docket No. 5691 Exhibit No. 10
IN THE MATTER OF Rhodes
DATE 9-27-50 WITNESS Rose
REPORTER Lucas

10

Rheumatic, Arthritic Sufferers

TODAY! RESUME CONFIDENT PAIN-FREE LIVING WITH AMAZING NEW *IMDRIN*

If you have suffered the tortures of the damned because of rheumatic and arthritic pains, swelling and stiffness ...get up mornings dreading the suffering the day may hold, and do it day after day, month after month, year after year... listen! IMDRIN with its amazing new wonder-working ingredient, may answer your problem of comfortable living. In case after case IMDRIN has proved its potency as one of the fastest arthritic and rheumatic pain relievers known to medical science. Cases deemed almost hopeless . . . persons who suffered, waited and hoped for as long as twenty years are able to live happy, comfortable, human lives once again. No other medicine for rheumatism and arthritis pains can make this amazing statement... back it up with proven clinical records. DON'T GIVE UP! Amazing new IMDRIN brings *new hope* of a better life for you . . . and is as close right now as your nearest drug store. Get IMDRIN today. Use as directed. If you don't agree that amazing, new, scientific IMDRIN is the greatest blessing you've ever discovered, return for your money back. Get IMDRIN at your drug store today ...resume comfortable living tonight!

O'Neil, Larson & McMahon—B&C 3339—11-4-48

Mc Mahon Exhibit No. 7.

B.

PUBLISHED ADVERTI. REFERENCE DATA

; News.; or other Per.: Cleveland Plain Dealer (NAME OF PUBLICATION) 14 Nov 77 (ISSUE DATE)

O.: Gen. Cat.; Circ.; Spec. Folder; Flyer: _____ (FIRM) _____ (SERIAL NO.) _____ (ISSUE DATE)

4 (SEC. NO.) 35 (PAGE NO.) _____ (COL. NO., IF CLASSIFIED) 23 Oct 79 (PRE. REV. DATE) _____ (EXAMINER)

_____ (NAME OF ADVERTISER) _____ (REFERRED BY-COMPLAINT LETTER-DATE)

Imdrin - rheumatism arthritis - remedy (PRODUCT, OR SERV. LIST)

_____ (TITLE OF COLUMN, IF CLASSIFIED)

11

Docket No. 7691
IN THE MATTER OF
DATE 9-27-78
HEARING EXAM.

Trudie Rose Kenworth

Rheumatic, Arthritic Sufferers:

If you have suffered the tortures of the damned because of rheumatic and arthritic pains, swelling and stiffness . . . got up mornings dreading the suffering the day may hold, and do it day after day, month after month, year after year . . . listen! IMDRIN with its wonder-working ingredients, may answer your problem of comfortable living. In case after case IMDRIN has proved its potency as ONE of the fastest arthritic and rheumatic pain relievers known to medical science. Cases documented almost hopeless . . . persons who suffered, waited and hoped for

so long as twenty years are able to live happy, comfortable, human lives once again. No other medicine for rheumatism and arthritic pains can make this statement . . . back it up with proven clinical records. DON'T GIVE UP! IMDRIN brings new hope of a better life for you . . . and is as close right now as your nearest drug store. Try IMDRIN today. Use as directed. If you don't agree that scientific IMDRIN is the greatest blessing you've ever discovered, return for your money back. Get IMDRIN at your drug store today . . . resume comfortable living tonight! (Adv.)

77

Docket No. 5497 Commission's Exhibit No. 12
IN THE MATTER OF Radio Pharmacal
DATE 9/27/50 WITNESS Foal

Amazing New Discovery for RHEUMATISM ARTHRITIS

NO FASTER PAIN RELIEF KNOWN

SAFE—HOSPITAL TESTED

Sensational New Research Discovery Stops Swelling ... Worries Inside.

NEW, SAFE, SCIENTIFIC TABLET

Not a narcotic! Not habit forming! Longtime sufferers from rheumatism, arthritis, and neuritis may find IMDRIN gives glorious relief, fast. Contains new wonder-working ingredient . . . no drugs or harmful drugs. Ask for IMDRIN today.

DEVELOPED AFTER THREE YEARS OF EXTENSIVE TESTS IN HOSPITAL CLINICS

IMDRIN has been a closely guarded experimental secret. Now proved conclusively to work internally toward amazing reduction of pain, heat, redness and swelling. For victims of rheumatism, arthritis, neuritis, sciatica, neuralgia. Get IMDRIN today.

RELIEVES PAIN AND SUFFERING AFTER 20 YEARS OF TORTURE

"About 20 years ago, arthritis forced me to quit my job, and walk with crutches. Finally, I tried IMDRIN. Today, nearly all soreness is gone, and my agony is over." G. H. P. Record, Mich.

"After five years of suffering, I discovered IMDRIN. The first day pain vanished. Now I walk without a cane and use my hand for dressing. Inflamed all disappeared. I feel better at 58 than years ago." A. V. Chamberlain, S. C.

"IMDRIN is worth thousands of dollars to me. When I used to assess my pain, it stabbed me like a knife. I tried many remedies, but only IMDRIN has brought wonderful relief." A. C. K. Spokane, Wash.

Photos, address on request. ©Signed by model.

TODAY—BEGINS PAIN-FREE LIVING

Become a More Normal, Active Life
Do as thousands of former arthritic sufferers do: See those pains relieved. Today . . . try amazing IMDRIN. Start living a happier, more comfortable life once again. Buy IMDRIN now!

WHERE RHEUMATISM STRIKES . . . AND HOW TO DETECT IT

Rheumatic and arthritic pain and inflammation strike any of the areas indicated on above chart (see Arrows). But these diseases have many forms and symptoms. *All forms* cause pain, frequent swelling, and possible loss of function of joints. Hospital test patients given IMDRIN resumed happy, active living once pain subsided and confidence grew. IMDRIN reduces swelling and eases pain rapidly. IMDRIN may give you the same blessed results. Get IMDRIN today!

HOW IMDRIN HELPS YOU!

If you suffer the tortures of arthritic pain, IMDRIN may be your greatest hope. IMDRIN is one of the fastest arthritic pain relievers known. Cases deemed almost hopeless . . . persons suffering twenty long years . . . are now living happy lives. Every case backed by hospital and clinical proof. Get IMDRIN today. If it isn't the greatest blessing you've ever used, return for your money back. Get IMDRIN today—resume comfortable living tonight!

AMAZING NEW IMDRIN

SAFE! SCIENTIFIC!

IMDRIN contains no dope or harmful drugs to cast habit forming. Hospital tests proven by one of the fastest pain relievers known for arthritic and rheumatic sufferers. Start using IMDRIN today. Don't allow the disease to enjoy living once again.

NO FASTER ARTHRITIC PAIN RELIEF.....OR YOUR MONEY BACK

MAIL THIS COUPON IF YOU LIVE OUT OF TOWN

DEALER'S NAME

DEALER NAME & ADDRESS
Stock up a 10 bottle of the new IMDRIN today.
☐ Send C.O.D. plus postage and ..... 25 extra for investigation enclosed. You pay postage.
Send large economy size, $5.00 ☐
NAME
ADDRESS
CITY ZONE STATE
Satisfaction Or Your Money Back

O'Neil, Larson & McMahon—B&C 5241—3-15-49—3

Mc Mahon Exhibit 2

FEDERAL TRADE COMMISSION
Docket No. 5611 EXHIBIT No. 13
IN THE MATTER OF Lander
DATE 9-27-50 WITNESS Rose
Ad No. 2-49R—3 col. x 123 lines

Amazing Discovery for Rheumatism, Arthritis

No Faster Arthritic Pain Relief Known

Developed After Three Years of Extensive Tests in Hospital Clinics

IMDRIN has been a closely guarded experimental secret before release for public use. Yes, medical men, after three years of extensive hospital tests, have proved conclusively that IMDRIN works internally toward amazing reduction of pain, heat, redness, and swelling in the joints. Every victim of rheumatism, arthritis, neuritis, sciatica, gout, neuralgia, should investigate this new development of modern medicine. Ask for IMDRIN at drug stores.

Where Rheumatic Pain Strikes . . . And How to Detect It!

Rheumatic and arthritic pain and inflammation can strike the joints in any of the indicated affected areas. (See arrows in illustration at right.) But these diseases have many forms and each form has varying symptoms.

Hospital and clinical test patients receiving IMDRIN, some of whom had suffered hopelessly for as long as twenty years, were able to resume more happy, active living once the pain subsided and their confidence grew. IMDRIN, working internally, eased pain rapidly. IMDRIN today is your great hope. IMDRIN with the new ingredient, may give you the same blessed successful results. Get IMDRIN today!

SAFE—HOSPITAL TESTED

Stops Swelling . . Uncorks Joints . . Contains Sensational Research Discovery

NEW, SAFE, SCIENTIFIC TABLET

Not a Narcotic . . . Not Habit Forming . . . AT LAST THE STORY CAN BE TOLD! Medical science has turned its attention to relieving the agonizing pains caused by rheumatism and arthritis. The result of extensive research is a wonder-working ingredient which is now combined with other pharmaceuticals into a remarkable preparation called IMDRIN. Longtime sufferers from rheumatism, arthritis, neuritis, and gout may find IMDRIN gives glorious relief so sensationally fast it's really amazing! There's nothing faster available to the public today. Contains no dope or harmful drugs. Only after three long years of clinical work and hospital testing was this fast, safe pain-killer developed, but today it is REALITY. If you suffer rheumatic pain ask for IMDRIN at drug stores.

Relieves Pain and Suffering After 20 Years of Torture

Men, why give up your active life because of any rheumatic, arthritic or neuritic aches and pains! Join the happy ranks of former sufferers who have banished the drag of these irritating ailments with IMDRIN.

NEW . . . SAFE . . . SCIENTIFIC

IMDRIN

Resume a More Normal More Active Life

For fast pain relief try IMDRIN, the amazing new scientific discovery. IMDRIN is one of the latest reliefs from arthritic pain known to medical science.

IMDRIN is a safe medicine evolved only after years of carefully controlled scientific and clinical research. It contains no dope or harmful drugs . . . is not habit forming. Hospital tests prove it is one of the fastest pain relievers for arthritic and rheumatic sufferers known to medical science. Start using IMDRIN today. Don't miss the chance to enjoy living once again.

The torturous pain of arthritis is a destroyer of good looks—makes one feel older than her years. If YOU are plagued by arthritis or rheumatism, regardless of your age, try IMDRIN at once. Only $3.00 with satisfaction guaranteed or your money back.

FOR FASTER ARTHRITIC PAIN RELIEF OR MONEY BACK . . .

AT WALGREEN'S • STINEWAY • GOLDBLATT'S • FORD HOPKINS LIGGETT-REXALL DRUGS • WIEBOLDT'S • FAY DRUG STORES SEARS, ROEBUCK AND CO. • AND DRUGGISTS EVERYWHERE

O'Neil, Larson & McMahon—BBC 5174—3-8-49—3

PUBLISHED ADVERTISE.. EVIDENCE DATA

Mg.; News.; or other Per.: The Cedar Rapids Iowa 1949
(NAME OF PUBLICATION) Gazette March 13.
(ISSUE DATE)

M. O.: Gen. Cat.; Circ.; Spec. Folder; Flyer: _____ (FIRM) _____ (SERIAL NO.) _____ (ISSUE DATE)

(SEC. NO.) 6 (PAGE NO.) _____ (COL. NO., IF CLASSIFIED) 4/29/49 (PUB. REVI DATE) R.W. (EXAMINER)

Imdrin
(NAME OF ADVERTISED) (REPORTED BY-COMPLAINT LETTER-DATE)

Imdrin
(PRODUCT, OR SERV. LINE)
{for arthritis-etc}

(TITLE OF COLUMN, IF CLASSIFIED)

FEDERAL TRADE COMMISSION
Docket No. 5691 Rhodes 22
IN THE MATTER OF Rhodes Pharmacal Co.
DATE 9-27-50 WITNESS Rose
REPORTER Reporter

ARTHRITIS

AND RHEUMATISM SUFFERERS

IMDRIN

Formerly known as IMDRIN With no change in formula

$2.98

Mail Orders Filed. Send $3.04

1-48

22

COMMISSION'S EXHIBIT NO. 24.

FUNDADOR—a brandy of delectable taste

There are few ports of call in all the world where the brandies of Pedro Domecq are not cherished by the most discriminating people. Ask for Fundador or Three Vines—still produced in Jerez, Spain, by the House of Pedro Domecq, in its seventh generation of unbroken lineage.

Pedro Domecq

CANADA DRY

Brandies

Fundador—Three Vines
Each 86 PROOF—

Amazing New Discovery for

RHEUMATISM, ARTHRITIS

NO FASTER ARTHRITIC PAIN RELIEF KNOWN!

SAFE...HOSPITAL TESTED

If you have been suffering the tortures of rheumatic and arthritic pains, swelling and stiffness for days, months, or even years, IMDRIN with the amazing new wonder working discovery may very well be the answer to the problem of pain-free living. IMDRIN has been clinically-tested in hospitals. In case after case IMDRIN proved its effectiveness as one of the fastest arthritic and rheumatic pain relievers known to medical science. Persons whose cases of suffering have been thought almost hopeless . . . yes, even people who had suffered and hoped for twenty years, were able to live free of pain . . . like happy human beings once again. No other medicine for rheumatism and arthritis thus far discovered by medical science has such an amazing record . . . and can back it up with proven hospital and clinical reports. DON'T GIVE UP HOPE. IMDRIN with amazing, new ingredient, that works internally and promises you a better life . . . is as close to you as your nearest drug store. IMDRIN is non-habit forming and proven safe. Try IMDRIN today—use as directed. If you don't agree that it is the fastest arthritic and rheumatic pain reliever you ever tried return for money back. Get IMDRIN today at your favorite drug store . . . resume comfortable living tonight.

AT FORD HOPKINS, GOLDBLATT BROS., LIGGETT-REXALL DRUGS, SEARS ROEBUCK, STINEWAY, WALGREEN, WIEBOLDTS, AND DRUGGISTS EVERYWHERE.

COMMISSION'S EXHIBIT NO. 25.

Rheumatic, Arthritic Sufferers

TODAY! RESUME CONFIDENT PAIN-FREE LIVING WITH AMAZING NEW *IMDRIN*

If you have suffered the tortures of the damned because of rheumatic and arthritic pains, swelling and stiffness ...get up mornings dreading the suffering the day may hold, and do it day after day, month after month, year after year... listen! IMDRIN with its amazing new wonder-working ingredient, may answer your problem of comfortable living. In case after case IMDRIN has proved its potency as one of the fastest arthritic and rheumatic pain relievers known to medical science. Cases deemed almost hopeless . . . persons who suffered, waited and hoped for as long as twenty years are able to live happy, comfortable, human lives once again. No other medicine for rheumatism and arthritis pains can make this amazing statement... back it up with proven clinical records. DON'T GIVE UP! Amazing new IMDRIN brings *new hope* of a better life for you . . . and is as close right now as your nearest drug store. Get IMDRIN today. Use as directed. If you don't agree that amazing, new, scientific IMDRIN is the greatest blessing you've ever discovered, return for your money back. Get IMDRIN at your drug store today ...resume comfortable living tonight!

AT FORD HOPKINS, GOLDBLATT BROS., LIGGETT-REXALL DRUGS, SEARS ROEBUCK, STINEWAY, WALGREEN, WIEBOLDTS, AND DRUGGISTS EVERYWHERE.

[ADVERTISMENT]

Were Stomach Ulcer Pains Napoleon's Waterloo?

The great Napoleon who conquered nations was himself a victim of after-eating pains. If excess stomach acidity causes you distress after eating, or painful heartburn, gas, sour stomach, indigestion, even stomach ulcer pains, then try Udga for quick relief. Udga Tablets contain 3 proven fast-acting medicinal ingredients. Like a doctor's prescription, Udga works soothingly and fast. More than 210 million sold since 1928. Get a 25c box of Udga and if you, too, don't get amazing relief within ½ hour, you get DOUBLE YOUR MONEY BACK.

—EDUCATIONAL—

BALLROOM DANCING CLASS

8-week term begins Saturday, Jan. 29. Waltz, fox-trot, rumba. Also classes in Contract Bridge by national authority. Spanish, Marriage, Speech, Psychology, Interior Decorating, others. Men and women. Catalogue.

LAWSON YMCA ADULT EDUCATION SCHOOL
30 W. Chicago Ave. WHitehall 4-4211

COMMISSION'S EXHIBIT NO. 26.

AMAZING NEW DISCOVERY FOR RHEUMATISM, ARTHRITIS

Gives Fast Pain Relief Safe...Hospital Tested

If you have been suffering tortures of rheumatic and arthritic pains, for days, months, or even years, IMDRIN with its amazing new wonder-working ingredient may very well be the answer to your problem of pain free living. IMDRIN has been clinically tested in hospitals throughout the country. In case after case IMDRIN proved its effectiveness as one of the fastest arthritic and rheumatic pain relievers known. Even people who suffered for twenty years were able to live free of pain like happy human beings once again. DON'T GIVE UP HOPE. IMDRIN works internally promises you a better life. IMDRIN is non habit forming, proven safe when used as directed. Try IMDRIN today. If you don't agree it is the fastest arthritic and rheumatic pain reliever you've ever tried, return for money back. Get IMDRIN at your favorite drug store today . . resume comfortable living tonight.

AT FAY DRUG STORES, FORD HOPKINS, GOLDBLATT'S, LIGGETT-REXALL DRUGS, SEARS, ROEBUCK AND CO., STINEWAY, WALGREEN, WIEBOLDT'S, AND DRUGGISTS EVERYWHERE.

Amazing Discovery for Rheumatism, Arthritis

No Faster Arthritic Pain Relief Known

Developed After Three Years of Extensive Tests in Hospital Clinics

IMDRIN has been a closely guarded experimental secret before release for public use. Yes, medical men, after three years of extensive hospital tests, have proved conclusively that IMDRIN works internally toward amazing reduction of pain, heat, redness, and swelling in the joints. Every victim of rheumatism, arthritis, neuritis, sciatica, gout, neuralgia, should investigate this new development of modern medicine. Ask for IMDRIN at drug stores.

Where Rheumatic Pain Strikes ... And How to Detect It!

Rheumatic and arthritic pain and inflammation can strike the joints in any of the indicated affected areas. (See arrows in illustration at right.) But these diseases have many forms and each form has varying symptoms.

Hospital and clinical test patients receiving IMDRIN, some of whom had suffered hopelessly for as long as twenty years, were able to resume more happy, active living once the pain subsided and their confidence grew. IMDRIN, working internally, eased pain rapidly. IMDRIN today is your great hope. IMDRIN with the new ingredient, may give you the same blessed successful results. Get IMDRIN today!

SAFE—HOSPITAL TESTED

Stops Swelling .. Uncorks Joints .. Contains Sensational Research Discovery

NEW, SAFE, SCIENTIFIC TABLET

Not a Narcotic ... Not Habit Forming ... AT LAST THE STORY CAN BE TOLD! Medical science has turned its attention to relieving the agonizing pains caused by rheumatism and arthritis. The result of extensive research is a wonder-working ingredient which is now combined with other pharmaceuticals into a remarkable preparation called IMDRIN. Longtime sufferers from rheumatism, arthritis, neuritis, and gout may find IMDRIN gives glorious relief so sensationally fast it's really amazing! There's nothing faster available to the public today. Contains no dope or harmful drugs. Only after three long years of clinical work and hospital testing was this fast, safe pain-killer developed, but today it is REALITY. If you suffer rheumatic pain ask for IMDRIN at drug stores.

Relieves Pain and Suffering After 20 Years of Torture

Men, why give up your active life because of any rheumatic, arthritic or neuritic aches and pains! Join the happy ranks of former sufferers who have banished the drag of these irritating ailments with IMDRIN.

NEW ... SAFE ... SCIENTIFIC

IMDRIN

IMDRIN is a safe medicine evolved only after years of carefully controlled scientific and clinical research. It contains no dope or harmful drugs ... is not habit forming. Hospital tests prove it is one of the fastest pain relievers for arthritic and rheumatic sufferers known to medical science. Start using IMDRIN today. Don't miss the chance to enjoy living once again.

Resume a More Normal More Active Life

For fast pain relief try IMDRIN, the amazing, new scientific discovery. IMDRIN is one of the finest reliefs from arthritic pain known to medical science.

The torturous pain of arthritis is a destroyer of good looks — makes one feel older than her years. If YOU are plagued by arthritis or rheumatism, regardless of your age, try IMDRIN at once. Only $1.00 with satisfaction guaranteed or your money back.

FOR FASTER ARTHRITIC PAIN RELIEF OR MONEY BACK ...

AT FORD HOPKINS • GOLDBLATT BROS. • LIGGETT'S • REXALL DRUGS • SEARS, ROEBUCK • STRAWAY • WALGREEN'S WESCOLDT'S AND DRUGGISTS EVERYWHERE.

Amazing Discovery for Rheumatism, Arthritis

No Faster Arthritic Pain Relief Known

Developed After Three Years of Extensive Tests in Hospital Clinics

IMDRIN has been a closely guarded experimental secret before release for public use. Yes, medical men, after three years of extensive hospital tests, have proved conclusively that IMDRIN works internally toward amazing reduction of pain, tenderness, and swelling in the joints. Every victim of rheumatic, arthritic, neuritis, sciatica, gout, neuralgia, should investigate this new development of modern medicine. Ask for IMDRIN at drug stores.

Where Rheumatic Pain Strikes ... And How to Detect It!

Rheumatic and arthritic pain and inflammation can strike the joints (one of the indicated affected areas. (See arrows in illustration at right.) But these diseases have many forms and each has its varying symptoms.

Hospital clinical test patients receiving IMDRIN, some of whom had suffered hopelessly for as long as twenty years, were able to resume more happy, active living once the pain subsided and their confidence grew. IMDRIN, working internally, ended pain rapidly. IMDRIN today is your great hope. IMDRIN with the new ingredient, may give you the same blessed successful results. Get IMDRIN today!

SAFE—HOSPITAL TESTED

Stops Swelling .. Uncorks Joints .. Contains Sensational Research Discovery

NEW, SAFE, SCIENTIFIC TABLET

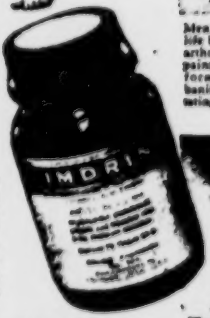
Not a Narcotic ... Not Habit Forming ... AT LAST THE STORY CAN BE TOLD! Medical science has turned its attention to relieving the agonizing pains caused by rheumatism and arthritis. The result of extensive research is a wonder-working ingredient which is now combined with other pharmaceuticals into a remarkable preparation called IMDRIN. Longtime sufferers from rheumatism, arthritis, neuritis, and gout may find IMDRIN gives glorious relief so sensationally fast it's really amazing! There's nothing faster available to the public today. Contains no dope or harmful drugs. Only after three long years of clinical work and hospital testing was this fast, safe pain-killer developed, but today it is REALITY. If you suffer rheumatic pain ask for IMDRIN at drug stores.

Relieves Pain and Suffering After 20 Years of Torture

Mrs., why give up your active life because of any rheumatic, arthritic or neuritic aches and pains! Join the happy ranks of former sufferers who have banished the drag of these irritating ailments with IMDRIN.

NEW ... SAFE ... SCIENTIFIC

IMDRIN



IMDRIN is a safe medicine evolved only after years of carefully controlled scientific and clinical research. It contains no dope or harmful drugs ... is not habit forming. Hospital tests prove it is one of the fastest pain relievers for arthritic and rheumatic sufferers known to medical science. Start using IMDRIN today. Don't miss the chance to enjoy living once again.

Resume More Normal Active Life

Be fast pain relief by IMDRIN, the amazing new scientific discovery. IMDRIN is one of the fastest relievers of arthritic pain known to medical science.

"The torturous pain of arthritis is a destroyer of good looks—makes one feel older than her years. If YOU are plagued by arthritis or rheumatism, regardless of your age, try IMDRIN at once. Only $1.00 with satisfaction guaranteed or your money back.

FOR FASTER ARTHRITIC PAIN RELIEF OR MONEY BACK ...

AT WALGREEN'S • STINEWAY • GOLDBLATT'S • FORD HOPKINS LIGGETT-REXALL DRUGS • WIEBOLDT'S • FAY DRUG STORES SEARS, ROEBUCK AND CO. • AND DRUGGISTS EVERYWHERE

29 Barfield Exhibit F.

Amazing Discovery for Rheumatism, Arthritis

FEDERAL TRADE COMMISSION
Docket No. 7491 Comp. Exhibit No. 29
MATTER OF Thorne Pharmacal
Rec'd
Returned

No Faster Arthritic Pain Relief Known

SAFE—HOSPITAL TESTED

For fast pain relief try the amazing, new scientific discovery, IMDRIN. Start a wonderful new pain-free life, or your money back.

SAFE SCIENTIFIC **IMDRIN**

IMDRIN is a safe medicine evolved only after years of carefully controlled scientific and clinical research. It contains no dope or harmful drugs . . . is not habit forming. Hospital tests prove it is one of the fastest pain relievers for arthritic and rheumatic sufferers known to medical science. Start using IMDRIN today. Don't miss the chance to enjoy living once again.

"...elements with IMDRIN. It's a wonderful feeling when you can again completely enjoy everyday life.

Free yourself from pain and agony. Leading medical men endorse IMDRIN as one of the fastest reliefs from arthritic pain known to medical science. Buy IMDRIN now!

FOR FASTER ARTHRITIC PAIN RELIEF OR MONEY BACK....

AT WALGREEN'S • STINEWAY • GOLDBLATT'S

FORD HOPKINS • LIGGETT-REXALL DRUGS • WIEBOLDT'S

FAY DRUG STORES • SEARS, ROEBUCK AND CO.

AND DRUGGISTS EVERYWHERE

The torturous pain of arthritis is a destroyer of good looks—makes one feel older than her years. If YOU are plagued by arthritis or rheumatism, regardless of your age, try IMDRIN at once. It's easy to use—easy to get at your nearest drug store. Only $3.00 with satisfaction guaranteed or your money back.

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FAST PAIN RELIEF

for Rheumatic, Arthritic

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AMAZING NEW **IMDRIN**

GAVE THESE SUFFERERS BLESSED RELIEF EVEN AFTER 20 YEARS OF PAIN AND TORTURE

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IMDRIN *Can help you!*

IMDRIN is a product scientifically designed to aid in the relief of nagging aches, pains, swelling, and stiffness accompanying arthritis and related illnesses, such as certain types of rheumatism, sciatica, bursitis, and neuritis.

IMDRIN was clinically tested and researched for three full years before release to the public.

Before it was released to the public, IMDRIN underwent long and rigorous testing under the direction of competent doctors in major hospitals and clinics. These researches proved that IMDRIN was one of the fastest and safest remedies known for alleviating the miseries of the rheumatoid state and arthritis.

Further, these physicians discovered that not only was IMDRIN an efficient medicament for the relief of the symptoms of these infirmities, but also, it was completely non-toxic in the dosages used and recommended. Stomach distress, which usually accompanies symptomatic treatment of these diseases by previous methods, was virtually eliminated, enabling more intensive treatment for quicker relief of pain.

NO MORE "BLUE DAYS"

In addition, the mental depression that sometimes resulted from therapy in these ailments was not found to be of major significance when IMDRIN was used as indicated. "Blue days" disappeared, and patients resumed their usual cheerful outlook on life. This is of utmost importance, since there seems to be a definite relationship between the onset of arthritis and mental condition.

Resume Comfortable Living!

It must be emphasized that IMDRIN was designed not only to help relieve pain, swelling and stiffness, but also to act by physiologically significant routes. Thus, the excretion of uric acid, which is held to be of significance in the therapy of gout, is increased by certain constituents incorporated in IMDRIN, aiding sufferers from that painful disease to regain a comfortable living status. To further assist relief from the discomfort of neuritis, which sometimes exists concurrently with the rheumatoid or arthritic state, and to aid in maintaining that feeling of well-being so significant in symptomatic therapy, thiamine chloride (Vitamin B1) is included in the IMDRIN formulation. For aid in and insuring adequate functioning of the vital enzyme systems (biochemical catalysts) of the blood and bones, manganese and succinate have been scientifically combined for maximum effect.

FAST LONG-LASTING RELIEF

It will be found that IMDRIN gives prompt, effective, and long lasting relief from the symptoms of the rheumatic and arthritic state when used as recommended. Two tablets before each meal taken with a glass of water usually suffice for relief in stubborn cases. As the symptoms subside, the number of tablets taken may be reduced. Remember that it is much better to continue taking IMDRIN for some time after all symptoms have disappeared. This will aid in preventing the recurrence of pains and stiffness.

IMDRIN is not habit forming—it does not contain narcotics. It is a reliable scientific remedy tested by doctors in famous hospitals, and offered to bring symptomatic relief to sufferers from arthritis, fibrositis and certain forms of rheumatism, sciatica and neuritis. To back up its claims, the distributors of IMDRIN stand ready to return your money if you do not get the relief you desire. All druggists have IMDRIN. Ask for it TODAY.

IMDRIN FAST PAIN RELIEF

IMDRIN FAST PAIN RELIEF

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RECEIVED OCTOBER 28, 1948

FEDERAL TRADE COMMISSION
Docket No. 3689
IN THE MATTER OF
DATE 7-27-50

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Tilden Rose
Research

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EX 200

IMDRIN

DIRECTIONS

FOR ADULTS ONLY. Two tablets before each meal with water, or as recommended by physician. If condition persists, see your physician.

(Formerly Called Emdrin)

As an aid in the relief of muscular aches and pains

Contents 72 Tablets
$3.00

Rugby Pharmacal Co., Inc.
Sole Distributors
CLEVELAND OHIO U. S. A.

Each tablet contains:

Manganese Salicylate, Calcium Succinate, Acetylsalicylic Acid, Thiamine Chloride (1 mg.) and Caffeine.

Imdrin is not intended for vitamin therapy.

COMMISSION'S EXHIBIT NO. 37.

IMDRIN Can help you!

Resume Comfortable Living!

FAST LONG-LASTING RELIEF

NO MORE "BLUE DAYS"

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IMDRIN FIRST PAIN RELIEF

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for Rheumatic, Arthritic
SUFFERERS

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REMARKABLE NEW IMDRIN

GAVE THESE SUFFERERS BLESSED RELIEF EVEN AFTER 20 YEARS OF PAIN AND TORTURE

*Posed by Professional Models

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IMDRIN GIVES FAST PAIN RELIEF

301 COMMISSION'S EXHIBIT NO. 39.

State of Illinois, } ss.
County of Cook. }

In the Matter of
Rhodes Pharmacal Company, Inc.

Affidavit.

Seymour W. Weisberg, being first duly sworn, on his oath deposes and says that he resides at 3520 Lake Shore Drive, Chicago, Illinois; that he is a practicing physician, specializing in internal medicine, in the City of Chicago, with offices at 55 E. Washington Street, having been duly licensed to practice medicine in the State of Illinois; that he received his M. D. Degree from Rush Medical College in 1936.

Affiant further states that he had a residency in medicine, Cook County Hospital, Chicago, Illinois, was on the staff of the Michael Reese Hospital, Chicago, Illinois, was a member of the faculty of Rush Medical College, Chicago, Illinois, from 1939 to 1942 and of the University of Illinois College of Medicine from 1942 to 1947, teaching internal medicine, including rheumatism and allied disorders, was an associate attending physician at Cook County Hospital from 1941 to 1944, and was an officer in the Medical Corps of the Army of the United States from 1944 to 1947. Affiant further states that he was elected a member of the Phi Beta Kappa and of the A.O.A., an honorary medical scholastic society, and is now a member of the Chicago and Illinois Medical Societies and of the American Medical Association. Affiant further states that he is a Diplomate of the American Board of Internal Medicine.

Affiant further states that as a practicing physician, he has had considerable experience in the diagnosis and treatment of the various types of rheumatism and arthritis
302 and the manifestations of these two classes of disease. Affiant further states that rheumatism is a generic term covering a variety of conditions, which have in common the presence of pain in some portion of the locomotor system. So widespread is the disorder, that it may safely be said that everyone suffers from it at least once,

if not many times, in the course of his life. "Muscular rheumatism," or painful muscles, is a particularly common type of rheumatism, and in the majority of instances it is primary—that is, not associated with or resulting from any other body disorders. In relatively few instances, the condition is secondary to some generalized disorder affecting the individual, but in such cases, the muscle pains are obviously of secondary importance, to the point where they are frequently overlooked entirely, and the attention of both patient and doctor is at once focused on symptoms which are obviously more significant, and more in need of attention. For example, the patient who suffers from gonorrhea and who, as a result thereof, develops muscular aches, will not be concerned primarily with the concomitant aching of the muscles. For the more common, primary type of muscular rheumatism, there is no known specific therapy, and the patient can expect little more than the application of measures designed to provide relief from the pain. It is apparent, however, that the relief of pain constitutes in itself an important aspect of therapeusis. Narcotics would, of course, effectively provide relief from the pain, but because of the ever-present danger of addiction, their use is interdicted. Of the other available analgesics, none has been used more widely, accepted by the medical profession more wholeheartedly, or dispensed in greater quantities, than have actylsalicylic acid and the salicylates. Indeed, it may be said that in all probability their use constitutes the most commonly employed measure in the treatment of rheumatic disorders.

Affiant further states that what has been said about muscular rheumatism applies in essence to articular rheumatism—pain involving the joints. Again, there is a
303 division into the far more common primary and the rare secondary types, and again there is a striking and unfortunate absence of specific measures to be employed in the treatment of the former type. Once again, salicylates, because of their effectiveness, their absence of toxicity, and their freedom from the danger of addiction, play a most prominent role in treatment. On this point, all workers in the field are agreed. In rare instances, joint pains are but the manifestation of some other disease affecting the body, but then it is evident even to the patient, because of the severity and number of associated symptoms, that such pains stem from another disturbance, are

in themselves obviously only of secondary importance, and need not be the object of treatment.

Affiant further states that in the symptomatic treatment of rheumatism, the salicylates play a unique role, the importance of which it is difficult to exaggerate. Their effectiveness is attested to by the frequency with which physicians prescribe them, and by the countless thousands of patients who depend on them for the relief of pain which would otherwise be incapacitating. Indeed, it may be said that, since specific therapy is largely unavailable in the treatment of rheumatism, it is truly fortunate that at least these drugs are at hand. The preparation Imdrin includes in its formula acetylsalicylic acid and manganese salicylate, and these drugs may be regarded as its most active ingredients, and those which confer on it analgesic properties. Those foregoing statements which have been made in connection with salicylates will be equally valid in regard to Imdrin, in view of its salicylate content. Examination of the statements made by the manufacturer indicates that the medication is not represented as a cure.
304 It should, as claimed, provide symptomatic relief from the aches and pains of rheumatism, and, if taken according to instructions, should not produce any harmful or dangerous effects.

Seymour W. Weisberg. (Seal)

Subscribed and Sworn to before me this 13th day of February, A. D., 1951.

Arthur O. Gettleman,
Notary Public.

COMMISSION'S EXHIBIT NO. 40-A. 771

MEDICINE SURGERY

OCCUPATIONAL DISEASES
TRAUMATIC, INDUSTRIAL

INDUSTRIAL MEDICINE
& RAILROAD SURGERY

Industrial Medicine | Volume 8 FEBRUARY, 1939 Number 2 | Industrial Surgery

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The Treatment of Arthritis

- and Associated Conditions: A Preliminary Report

LAURENCE H. MAYERS, M.D.,
and
S. K. LIVINGSTON, M.D.

THROUGH clinical trial the profession has learned that the various forms of therapy advised for arthritis show a limited percentage of favorable responses to treatment. Not uncommon in the literature on this disease are accounts that report improvement in 60% of 180 cases; 65% of all cases; 47% of 100 cases; 48% of 27 cases. Despite the many forms of therapy employed, however, there remains a large number of patients who are unimproved, regardless of the treatment given. These persons form that great army of unrewarded arthritics who eventually become chronic cases and who present a sharp challenge to the profession.

Early in 1938, one of us (L.H.M.) received upon request through an English investigator a small quantity of "a parenteral acid preparation"* reported as having been successfully employed in the treatment of arthritic patients. The initial experience stimulated active interest, leading to the employment of this preparation in a series of 105 cases, most of them the chronic type referred to above. With these patients we believe we have demonstrated clinically the superiority of the new treatment over other forms of arthritis therapy in respect to (1) rapidity of action, (2) absence of reactions, and (3) safety.

Ten years ago, Dr. Eduard Lyss, of Biel, Switzerland, developed a form of therapy for the administration of three commonly used therapeutic agents: sulfur, iodine, and formic acid combined with a terpene. In its present form the new preparation represents a refinement of that original combination. Per cubic centimeter, it contains formic acid, 0.0018 gm.; 95% alcohol, 0.055 cc.; iodine, 0.004 gm.; sulfur, 0.0002 gm.; terpene (camphene from Borneol camphor) 0.0001 cc. with distilled water q.s. ad 1 cc. The combined amount of the component drugs is equivalent to one drop. Terpene enters into the formula as a volatilizing agent, rather than for any therapeutic action of its own.

* Medical proprietary preparation, known as Arthritis II.

Medical science is familiar with the pharmacodynamics and therapeutic action of all the components of this new product so far as studies of their action have been recorded. Each has been accorded its place in the materia medica and each has been used in the treatment of arthritis. However, these three drugs combined with a terpene form an entirely new preparation, creating a synergistic action already proved to have a unique value, therapeutically.

Professor-Doctor Hans Eppinger,[2] of the University of Vienna, has carried on much of the clinical and experimental work with the preparation during the last four years at the First Medical Clinic in Vienna. Two of his associates, Drs. Erlsbacher and Burger, reported the following[3] concerning their cases under treatment:

TABLE I
RESULTS OBTAINED IN 103 CASES OF ARTHRITIS AND ASSOCIATED CONDITIONS
at the
FIRST MEDICAL CLINIC OF VIENNA —
DOCTOR HANS EPPINGER

No.	Cases	Injections	Complete Imp. %	Slight Imp. %	Negative
50	Acute Myalgies	3-4	100		
	Chronic Myalgies	8-20	84	12	4
28	Acute Neuralgies	6-8	100		
	Chronic Neuralgies	12-20	65	30	5
9	Humero-Scapular Arthritis	8-12	75	25	
16	Sciatica	3-20	85	10	5

The new preparation produces its most spectacular results in acute cases, such as the acute myalgies, neuralgies, muscle spasm, and lumbago. In chronic cases, the period of treatment necessary before there is a definite clinical improvement is from three to six months, results which other procedures for the treatment of arthritis and associated conditions have seldom demonstrated. The relief of sciatica and lumbago has been dramatic in its suddenness and in the number of favorable responses to treatment. The immediate relief of pain and the removal of muscle spasm, which we have shown in a greater percentage of cases under the new parenteral acid therapy than with other forms of treatment, provides a valuable subjective response on the part of the patient. Similarly, there is favorable objective response in the return of normal circulation in the affected part with the subsequent production of a more normal function.

In our work we have found no malaise or digestive or bowel upsets attendant upon or following the injections. This factor greatly widens the range of application and effectiveness of the treatment, for, of the some 2,200 proprietary preparations for the treatment of arthritis, 40% depend upon the digestive organs for tolerance and subsequent absorption into the tissues and circulatory system for distribution. The variability of the range of tolerance of the digestive system and the time required for the drug to reach and aid the af-

fected part indicate something of the inconstancy of the results obtained by such means. The new preparation obviates these factors and thus its more extensive use is permitted.

This new product produces no anesthetic changes. It is not an anesthetic. It does not affect mobility or the reflexes in the injected part and each may be demonstrated without impairment immediately following injection.

The mode of action of the new preparation is admittedly obscure and empiric. It is thought that the components in the presence of the terpene are diffused and disseminated in the tissues in an action comparable to that evidenced in greater molecular dissociation. The therapeutic principle of the parenteral acid therapy is presumably the restoration of normal circulation in an affected part, the elimination of toxins resulting from tissue damage, and the production of lymph flow with the resultant removal of tissue edema. Such action permits cellular repair and a return to a more normal function. This new therapy has the advantage of producing such results immediately and safely by injection into the involved and adjoining areas.

In short, the new parenteral acid therapy is a safe, convenient, and quick office procedure, which requires no elaborate equipment for its administration. Its effectiveness in the treatment of arthritis is indicated not only in the patient's subjective responses, but also in very notable objective improvements.

Prodromal symptoms such as cramps, weakness of muscles, muscular wasting, paraesthesias, vasomotor disturbances of the extremities, tremors, and fatigability can be relieved by this form of treatment, we find. The course of the disease, which reduces the general health and aggravates the symptoms, can be abated with this therapy more quickly than with any other therapy used in our combined experience. The new preparation relieves muscle spasm and reduces pain, thus allowing active movement early in the course of the disease. In this way, faulty positions and deformities can be prevented. When arthritic manifestations in both the small and large joints are advanced and when muscular pain and wasting are extreme, the new therapy is more effective than any combination of other measures we have employed.

The assumedly less virulent germs, considered as commonly present in arthritis, are not overly toxic or destructive to tissues. Such tissues as are assaulted by these bacteria are given an excellent chance for repair when normal circulation can be rapidly restored to the involved area. From our clinical observations, we think that the new parenteral acid therapy activates the restoration of normal circulation. Despite the fact that this action may be only temporary, its repeated application, it is believed from our clinical experiences, will allow the tissues to secrete their normal efficient ferment and thus promote healing.

This is a form of therapy that will remain in the hands of the physician during the entire course of the disease. It cannot be prescribed by the druggist to the laity. The pseudo-scientist, because of his lack of familiarity with regional anatomy as employed in regional anesthesia, cannot use it.

Rationale of Injection

THIS is one of the few drugs that requires a definite technic for its administration, such technic being best learned by demonstration. The proper technic in the handling of this procedure demands the knowledge of regional anatomy that is used in regional anesthesia. This, with most doctors, merely requires a review of former experience and knowledge.

In examining the affected part, the area is thoroughly palpated for local points of tenderness and muscle spasm. These areas usually follow the innervation of the region and, when localized, the hypodermic injection is given directly into the tender points. When generalized pain is present over the entire arm or leg, the injection is made into the region of the main nerve supplying the part. Immediate relief, in acute cases and acute exacerbations in chronic cases, usually follows such perineural injections even though the site of injection is not into the actual involved area. In the involvement of the entire shoulder and arm, immediate relief is usually provided by brachial block from the supraclavicular approach.

With pain in the hands and feet, the involved areas are relieved by injections about the nerves in the forearm and lower leg, respectively. In acute inflammatory pain in the great toes—gout, for example—one or two injections directly into the base of the inflamed area will usually suffice. In cases of knee edema and pain, the area is injected at painful tender points as localized by palpation. The likely response to this procedure is a reduction in acute edematous swelling, the abatement of pain and muscle spasm, and a return to a more normal function in the area. The parenteral acid therapy differs from other methods used in the relaxation of muscle spasm in that there is no associated systemic reaction following the injections.

Backache and the associated sciatic syndrome comprise a large part of the complaints that many patients offer. The problems of diagnosis of the proper etiology and the manner of the production of the symptoms require a thorough physical examination, an x-ray check-up, and a differential diagnosis of the various possible causes. Foremost among the latter are traumatic backache, postural backache, reflex backache, low backache from diseased facets, sacro-iliac strain and subluxation, and local tissue derangement. The work-up necessary for diagnosis usually entails considerable time during which period the distressing symptoms persist. It is during this interval that the therapy here described lends itself advantageously to the relief of pain; this factor, in turn, makes for greater cooperation on the part of the patient.

In acute low back pain, when local areas of tenderness are not found, the injection is made with a one-inch needle, deep into the lumbar musculature. The same procedure is followed in lum-

3.7 [redacted] FEDERAL TRADE COMMISSION Exhibit No. 664 / Docket No. 5470 - C

nagues. In sacro-iliac complaints, the injection is made directly over the area, care being taken to avoid injuring the periosteum with the needle.

The immediate burning sensation accompanying nearly all injections, regardless of site, passes within a few seconds after injection. The amount given per injection ranges from ½ to 5 cc., depending on the site and amount of involvement. Effective treatment usually requires several such injections about the affected parts. Total injections at one time up to 10 or 20 cc. have occasioned no malaise or toxicity, nor do the injections produce anesthetic changes.

The clinical evidence for our findings concerning this new therapy rests, as we have stated, in a series of 105 cases, clinically investigated and treated over the past six months. In reporting these cases, we have relied on both objective and subjective findings. The bulk of the cases comprising this report are chronic arthritics. Hench and others[1] say that the usual debate as to classification of arthritis finds some workers "considering atrophic and hypertrophic arthritis varieties of one disease, differences being chiefly due to the factor of age, physiologic rather than calendar. To them atrophic arthritis represents the reaction of physiologically young tissues against an insult; hypertrophic arthritis is the reaction of physiologically aging tissue against the same insult."

Typical of our findings are the following 20 cases treated at the hospital clinic and in our private practices.

Case 1. A research engineer, aged 40, complained of pain over the lumbar and coccygeal regions and over both sacro-iliac joints for a period of 18 years; more recently, pain and intense discomfort coupled with swelling have developed over the left heel and between the right great and first toes.

Examination revealed purpura hemorrhagica distributed downward over the legs. There was pain and tenderness over the lumbar and coccygeal regions, extreme tenderness over the left heel, painful swelling between the right great and first toes, and intense pain along the course of the right sciatic nerve.

X-ray studies of the spine, knees, ankles, and feet showed bony spurring on the bodies of the vertebrae and roughening of the articular surfaces of the knees, ankles, and the small bones of the feet characteristic of osteoarthritis. There was also some demineralization of the bones of the feet.

Treatment during the course of his disability began with the removal of fragments of the lumbar spinous processes following a saddle injury to the lower lumbar region. This was followed one year later by reoperation and curettment. Other treatment consisted of Swedish massage, accompanied by cabinet, tub, and mineral baths, one to two times a week for 18 years; infra-red and ultra-violet light treatments every two weeks for 18 years; a course of potassium and iodine injections weekly for six months; and fever treatments for five months. On June 6, 1938, he entered the hospital for additional treatment.

Aciform II therapy was instituted on September 7, 1938. He received a total of 5 cc. at six sites along the right sciatic nerve, over the left os calcis, and between the right great and first toes. Six treatments were given at weekly intervals.

Following the first treatment, he received relief from pain for 12 hours in all areas injected. Following the third treatment, he was able to wear shoes for the first time in two years. By the end of the series, he had improved markedly. Now more physically fit than at any time since the original injury, he is able to resume his work.

Case 2. An office worker, aged 50, was admitted to the hospital on August 29, 1938, suffering from severe pain in the lumbosacral region and along the course of the right sciatic nerve. The pain had developed progressively. The diagnosis was hypertrophic arthritis with acute sciatica on the right side.

Findings at the physical examination were essentially negative except for the localized injury over the sacro-iliac region and demonstrable pain along the course of the right sciatic nerve.

The x-ray diagnosis, in view of the early bony proliferation about the neck of the right femur and acetabulum, was hypertrophic arthritis.

Previous treatment consisted of the following: Diathermy, twice weekly for six weeks; massage, three times a week for six weeks; exercise, six weeks; local heat, six weeks; and supportive measures, five weeks. There was no improvement in symptoms.

Aciform II was first injected on September 8, 1938, with three 1-cc. doses into the right gluteal region and leg, as shown in Fig. 1 B. A total of three treatments were given at the weekly clinic.

The first treatment brought relief from pain for 72 hours; four days relief followed the next treatment, and after the third treatment, the sciatic pain disappeared and the patient volunteered to leave the hospital and return to work.

Case 3. A waiter, aged 54, had pain involving the feet, hands, left elbow, and lower cervical spine. The pain had been present over these areas since 1931, during which period there had been a gross enlargement of the knees together with marked limitation of motion. The pain and symptoms could not be accounted for in any previous infectious illness. Examination revealed spasm over the erector spinae muscle group, together with marked reduction in grip and painful swelling over all the involved joints.

Roentgenographic examination of the entire spine and multiple joints revealed the roughening of the joint spaces and the bony spurring on the vertebral bodies indicative of atrophic arthritis. Enlargement of both knees suggested synovitis.

Previous treatment had consisted of symptomatic medication, seven years; active and passive exercise, seven years; contrast baths, seven years; diathermy, five years; supportive measures, seven years; and local heat, seven years. No lasting benefits resulted from any of these measures.

Aciform II therapy was first begun on September 7, 1938. He was given four weekly treatments,

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each consisting of local injections about the knees and adjacent involved areas.

Relief from pain was noted for 18 to 24 hours following the initial treatment. With subsequent treatment, there was progressive diminution in the amount of pain and disability. At the end of the course, the patient returned to his work.

Case 4. A railroad fireman, aged 48, complained of joint pains over the right elbow, both hands, both ankles, both feet, and cervical spine. The original involvement began in the wrists in 1927. The following year, he suffered an injury to the right elbow and the arthritic process progressed to both hands, ankles, feet, and cervical spine. Except for a compensatory left dorsal, right lumbar scoliosis, swelling of the interphalangeal joints, and limitation of motion in the right shoulder and elbow, the physical examination was negative.

X-ray examination of the cervical, dorsal, and lumbar spine and the sacro-iliac joints showed evidence of atrophic arthritis. There was roughening of the articular surfaces of the ankles, the small bones of the feet, the hands, and the wrists, resembling arthritis.

Previous treatment had consisted of the following: Exercise, 11 years; diathermy, six years; local heat, eight years; massage, twice weekly for 11 years; symptomatic medication, 11 years; and contrast baths, once weekly for 10 years.

Acriform II injections were given at weekly intervals for three weeks into the lower cervical and adjoining involved areas in conjunction with local injections into the right arm and wrist. On one occasion, a brachial block was given as illustrated in Fig. 5.

The swelling about the elbow was reduced and all joint pains were relieved with the single exception of general pain over the right wrist and hand.

Case 5. A stockbroker, aged 50, had, in addition to pain and swelling over both ankles and both sacro-iliac joints, pain, stiffness, and limitation of motion over the lumbar and thoracic spines. Onset of symptoms began four years previously and he had been hospitalized for several periods, each of several months duration.

The physical findings indicated that indefinite pains were present about the spine and multiple joints, but that the acute symptomatology referable to arthritis had subsided. There was slight restriction of motion over the spine and visible erector spinae muscle spasm. Pain was evidenced on deep percussion over the spine and sacro-iliac joints.

Roentgenographic studies of the spine, sacro-iliac and multiple joints showed spurring of the bodies of the vertebrae, partial fusion of both sacro-iliac joints, and roughening of the articular surfaces of various joints. All findings were characteristic of osteoarthritis.

Previous treatment had included two courses of fever therapy accompanied by massive doses of vitamin D. In both cases, he received only temporary relief from pain and symptoms.

Acriform II therapy was begun on October 25, 1938, and continued through November 9, 1938, during which time a total of three treatments was given. Each treatment consisted of multiple injections along the course of the spine and about the neck.

The patient responded promptly to the injections; there was immediate relief from pain over the entire back, following the initial treatments. On the occasion of the first treatment, palpably

Fig. 1-A.

Fig. 1-B.

Fig. 2.

Fig. 1-A (Case 1): The course of the deep peroneal nerve posteriorly, to its terminal branches in the great and second toes. Fig. 1-B (Case 1): Posterior view of the leg showing the injection points along the course of the sciatic nerve and the posterior tibial nerve. Fig. 2 (Case 3): Points of injection about the knee in arthritis and traumatic contusions

spastic muscles over the mid-back were immediately relaxed and there has been no return of spasticity.

CASE 6. A professional man, aged 45, awoke with severe pain in the right back accompanied by stiffness and marked restriction of motion. The symptoms persisted over a period of four days, during which time heat and rest effected no change in symptomatology. Examination revealed erector spinae muscle spasm. Aciform II was given on one occasion directly into the muscle belly on the right side with immediate relaxation of spasm and immediate cessation of pain, stiffness, and disability.

CASE 7. A general laborer, aged 45, had sciatic neuritis on the right side and pain over the wrists and ankles. This condition had been present over a year. After leaving the hospital in the fall of 1935, at which time he was treated for a chip fracture of the ankle, he remained in good health until December, 1937, when severe pain developed in the back. It then progressed to the wrists, ankles, and adjacent areas. Tonsillectomy relieved him of pain so that he was able to walk. However, despite this measure, the pain persisted to a slight degree, and recently had grown worse.

Fig. 5.

(Case 5): The points of injection into the musculature over the lumbar nerve roots of the lower back. Also shown are the points of injection for the sacro-iliac joints

There were no physical signs of injury or inflammation. There was pain in the right leg, extending from the buttocks down the posterior aspect of the leg and on the lateral side of the calf. The x-ray findings were essentially negative, showing no bony changes that would account for the pain.

Previous treatment had consisted of massages, twice weekly; hot and cold baths, twice weekly; daily exercise; removal of foci of infection; and local heat and light, three times weekly over the past year. Only temporary relief was received.

Weekly intervals on three occasions, he received Aciform II injections at sites along the course of the right sciatic nerve. The marked relief of the leg pain, which previously had been so evident on motion, as well as the relief of the back pain, caused the patient to leave the hospital voluntarily.

CASE 8. A railroad worker, aged 53, had pain over the course of the left brachial plexus. After suffering a crushing injury to the left shoulder and upper arm in 1929 while coupling freight cars, he had a persistent pain, as well as tenderness and limitation of motion, especially over the deltoid area; coupled with this was marked weakness of the muscles of the arm and forearm.

With the exception of the painful area surrounding the site of the original injury, the examination was essentially negative. There was revealed marked atrophy of the muscles over the shoulder girdle and similar atrophy extending over the entire arm and forearm. Weakness was evidenced by nearly complete loss of function.

Previous treatment consisted of nine year's rest; opiates; infra-red treatments, twice weekly for nine years; and massage, once weekly for nine years. No beneficial results were obtained.

Aciform II therapy was instituted August 30, 1938, with weekly injections until September 20, 1938. Each treatment consisted of injections as brachial blocks as well as local infiltrations over the lower cervical spine and along the borders of the trapezii.

Relief from pain was immediate and he was able to sleep after the first treatment without the administration of opiates. Clinical improvement progressed with each additional injection until a series of five treatments had been completed. At the close of the series, pain had disappeared and an almost complete range of motion had been restored to the left arm.

Fig. 6.

(Case 7): The course of the sciatic nerve and its division into the common peroneal nerve and the posterior tibial nerve

CASE 9. An office worker, aged 44, complained of neuritic pain associated with a fracture of a spine graft. After a Hibbs-Albee spinal fusion for spondylolisthesis in 1934, the patient remained free from osteo-arthritic symptoms until April, 1938. At that time, there developed a sudden onset of severe lancinating pain in the coccygeal and lower lumbar region on both sides and also neuralgic pain radiating down both legs.

The physical examination was essentially negative except for the localized tenderness along the right side of the level of the third and fourth lumbar vertebrae and pain down both legs. Examination disclosed fixation of the graft at the level of the fifth lumbar vertebra, the fracture of the graft being at the level of the third and fourth lumbar vertebrae.

Previously, the patient had had massage, twice weekly, and heat (infra-red) and light treatment

weekly over a period of six months. These measures, instituted with the persistence of severe pain, failed to relieve his discomfort. It was thought advisable to open the fracture site for repair of the graft.

Two cc. of Aciform II were injected on August 29, 1938, at the level of the third and fourth lumbar vertebrae on the right side. There was immediate cessation of pain, both in the legs and lumbar region. There has been no recurrence of pain and further therapeutic or surgical methods are deemed unnecessary. Injection sites are illustrated in Fig. 3.

Case 10. A former layout man, aged 42, complained of pain and spasm accompanying a corrected fracture of the tibia and fibula. He entered the hospital on June 5, 1938, complaining of severe pain in the right leg, just above the ankle, accompanied by swelling and inability to place any weight on the foot. He reported that a misstep off a curb had resulted in this condition.

The ankle and lower leg were marked by pain on manipulation, as well as by tenderness and swelling. Examination disclosed a fracture of the right tibia and fibula just above the medial malleolus of the ankle.

Because this pain involved an area supplied by the sciatic and peroneal nerves, Aciform II was injected along the course of these nerves in an effort to relieve muscle spasm and pain. Relief of pain was obtained for 10 to 12 hours, permitting a more rapid convalescence, the withdrawal of opiates, and a return to normal diet. Figures I-A and I-B show injection sites along the sciatic and peroneal nerves.

Case 11. A barber, aged 40, complained of pain associated with a fracture of the right os calcis. He was admitted to the hospital on August 23, 1938, with swelling over the right heel and foot, in addition to pain and crepitus. This condition developed after he had struck the heel violently against a curb.

X-ray examination revealed a fracture of the right os calcis with upward displacement of the fragments. Previous treatment had consisted of medication and opiates.

On August 28, 1938, the patient was given one injection of 3 cc. Aciform II directly into the painful area. There was complete relief of pain for 10 to 12 hours, such relief permitting earlier operative correction and the withdrawal of opiates in the relief of pain.

Case 12. A general laborer, aged 42, had pain associated with osteomyelitis. In May of 1938, he ran a sliver into his right ring finger with resultant ascending cellulitis and lymphangitis. Although the finger was amputated, the stump area continued to drain and pain persisted.

The condition was diagnosed as osteomyelitis of the right hand and elbow. The disability, at this stage, showed subsidence of the cellulitis and osteomyelitis. However, there was marked muscular atrophy.

X-ray study of the affected area showed no further bone involvement. The right ring finger had been amputated at the first joint; the remainder of the finger was normal in contour.

One injection of 3 cc. of Aciform II was given as a brachial block (as shown in Fig. 5) for the relief of associated pain. The immediate cessation of pain which followed this treatment not only shortened the period of convalescence, but also permitted the withdrawal of opiates. There has been no recurrence of pain over the time of observation.

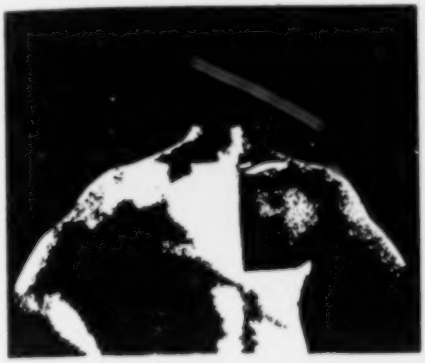

Fig. 5.

Fig. 6.

Fig. 5. (Case 9): The figure shows the point of injection for performing a supra-clavicular brachial block. The shaded area shows the nerve distribution over the shoulder and left arm. Fig. 6. (Case 16): Posterior view of the neck and upper back showing the points of injection over the posterior thoracic nerve roots and the cervical nerve roots. Also shown is the area of nerve distribution

Case 13. A lawyer, aged 50, complained of pain and stiffness in the neck, shoulders, arms, and back. Onset occurred 26 years ago and was first evidenced in a severe attack of sciatica. Spondylitis has been present for the last 10 years. Pulmonary tuberculosis, which originally appeared in 1909, recurred in 1918 following a series of five hemorrhages. During this, the last siege with tuberculosis, his weight fell off to 100 pounds.

The physical findings revealed spondylitis involving the cervical, dorsal, and lumbar spines with practically complete ankylosis of the lumbar spine. Marked pain and crepitus were exhibited in the shoulders and the muscles over the shoulders and neck were spastic. His weight at time of examination was 150 pounds.

Roentgen examination of the chest showed healed tuberculous lesions of both upper lobes. X-rays of the back disclosed marked hypertrophic arthritis of the dorsal and lumbar spines.

Record of laboratory examinations showed a leukocyte count over the past two years, averaging 7000, hemoglobin 97% (16.4 grams) and erythrocytes, 4,830,000.

Previous treatment consisted of diathermy, once weekly for six years; massage, twice weekly for six years; vitamin D, daily for six months; osteopathy, twice monthly for one year; vaccine, every four days for six years; "Hay diet," three years; and change of climate, three months per year.

Vaccine therapy controlled all of his acute exacerbations and relieved the pain in all joints with the exception of the neck. This pain had remained constant for two years.

Aciform therapy was instituted on June 30, 1938, with injections at the sides around the neck and into the shoulders. He received these injections over a period of four months, the treatments spaced a week apart.

The patient secured relief from the pain which eight years of vaccine therapy and the other treatment described had failed to accomplish. He is still continuing with the Aciform II treatment because of the comfort he receives in controlling muscle spasticity.

Case 14. A businessman, aged 41, complained of acute pain dating from a severe traumatic injury to the back 15 years previously. The back pain had been persistent over this time; also pain in the left leg had been present for several months past. Recent acute exacerbations of pain had been more severe than previously. The only severe illness was typhoid at the age of three. The tonsils were removed empirically in 1926.

Palpation, the patient exhibited acute tenderness and pain in the lower lumbar region, further aggravated by manipulation. There was also acute tenderness over the course of both sciatic nerves. The x-ray findings showed spondylolisthesis of the fifth lumbar vertebra.

Previous treatment had been as follows: Brace, 10 years; salicylates, five years; amytal and codeine each day, twice a week for five years; rest, three months, and baths, twice a week for three months.

Aciform II was first given on August 28, 1938, with injections into the gluteal regions as well as paravertebral lumbar injections as shown in Fig. 3. Similar injections were made into the posterior aspect of the left leg as shown in Fig. I-B. Treatments were spaced four days apart and were continued over a period of two months. After the second injection, pain disappeared completely and the muscular deformity was amazingly corrected. Treatment was continued with injections over the course of the sciatic nerves to relieve stiffness.

Case 15. A housewife, aged 60, complained that, 10 years previously, pain, tenderness, and stiffness in the back, hands, and knees had begun with acute onset. There was steadily progressive weakness and disability. During the course of the disease, acute exacerbations were confined to the hands and knees. The back pain remained constant. The patient's only major illness was an attack of measles during childhood. Despite this history, her tonsils and several devitalized teeth had been removed empirically without benefiting her condition.

Physical findings revealed no demonstrable changes in the joints with the exception of a moderate limitation of motion. Other findings were essentially negative. The diagnosis was hypertrophic arthritis.

X-ray examination of the knee-joints showed definite bony production changes, as well as lipping of the articular surfaces of both tibiae and the patellae. A marked scoliosis in the lumbar spine was a complicating factor.

Previous treatment consisted of massage, weekly for six months; cradle and carbon arc lights, twice a month for six months; contrast baths, twice monthly for two years; diathermy, once monthly for one year; and vaccine every four days for eight years.

While the patient was under regular vaccine treatment, the pain in the knees and hands disappeared and there were no acute exacerbations. The back pains failed to respond to any previous therapy.

Aciform therapy was begun on June 29, 1938, with bi-weekly injections over a period of four months. Injections were given in 1-cc. doses on each side of the lower back, as shown in Fig. 3.

The pain in the back has gradually disappeared. However, the treatments are being continued once weekly for the relief of stiffness, which is now gradually disappearing. Aciform was the first measure to which her back pains made any response.

Case 16. A physician, aged 63, complained of acute pain and tenderness in both wrists, arms, shoulders, back, and right middle finger. Symptoms were first evidenced in 1908 when there was some joint and muscular involvement following a severe attack of septic sore throat. Intermittent pain with acute exacerbations at irregular intervals continued until 1917 when the middle finger and both wrists became involved. These joints gradually became chronic in character, and more recently, the arms, shoulders, and back became involved.

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Our physical findings showed no deformity of the wrists, arms, shoulders, or back. The right middle finger was swollen and partially flexed at an angle of 30°. There was no limitation of motion, nor was there any redness or swelling except in the case of the middle finger. The diagnosis was hypertrophic arthritis.

Previous treatment consisted of the following: diathermy, twice a week for one year; massage, weekly for three years; vitamin D, three capsules daily for six months; vaccine, every four days for 12 years; change of climate, six weeks; local heat, daily for one month; removal of foci (as below).

There was no change in symptomatology following a tonsillectomy and he was not rewarded for the sacrifice of six devitalized teeth. The palliative measures described benefited him only temporarily. It is our impression that the vaccine therapy controlled his acute exacerbations of pain and stopped the progress of the deformity. Despite the continued use of vaccine, stiffness and pain in the shoulders and lower back persisted intermittently.

The laboratory findings were: Hemoglobin, 106% (18 grams); erythrocytes, 5,230,000; leukocytes, 6,500; urea nitrogen, 10.3 mgs.; sugar, 99 mgs.; cholesterol, 250 mgs.

Aciform treatment was instituted on June 28, 1938. Injections into the shoulders and back were continued every four days over a period of four months, after which treatment was discontinued because all symptoms had subsided.

Case 17. A businessman, aged 45, complained of pain over the lower back and leg along the course of the sciatic nerve for three years. The course of the disability had been progressive. There were no acute or chronic illnesses to account for the onset or course of his complaints. He was never subject to acute or chronic sore throat. Despite this previous history, the tonsils were removed empirically in 1935 with no effect on his sciatic condition.

Physical examination revealed the presence of diffuse tenderness and pain over the gluteal regions and along the course of the left sciatic nerve. The left leg was one-third the size of the right. There was marked atrophy and loss of muscle tone in direct proportion to the diminished size of the leg. Diagnosis was sciatic neuritis with disuse atrophy.

X-ray findings showed bony spurs on the bodies of the lower five lumbar vertebrae. At the fifth lumbar, the interspace was decreased in vertical diameter. There was lipping of the bodies of the fifth and sixth lumbar vertebrae. The bones of the feet showed arthritic changes, but there was no bony destruction.

Previous treatment consisted of the following: Aspirin, daily for three years; diathermy, twice weekly for one year; baths, weekly for three months; osteopathy, weekly for one year; vitamin D, two or three capsules daily for six months; and removal of foci. Intermittent, temporary relief followed previous treatments, but the weakness and muscle atrophy continued to progress.

The laboratory findings were: Hemoglobin, 94% (16 grams); erythrocytes, 4,700,000; leukocytes, 10,500; Wassermann, negative.

Aciform treatment was instituted on August 28, 1938, with injections at points indicated on Figs. 1-B and 3. Injections were given every fourth day for a total of eight treatments.

After the second injection, the patient was dramatically relieved of pain. He received eight additional injections after which he was discharged. After the return of normal function in the leg as the result of the relief of pain, the muscle atrophy disappeared and the tone was restored to normal.

Case 18. A businessman, aged 48, declared that 11 years ago, there was a sudden acute onset of pain in the right wrist, both knees, both elbows, and the left shoulder. Pain was present on both motion and rest. The acute attack lasted for six weeks. During the past 10 years, dinner-fork deformities developed in both hands, together with atrophy of the left arm to one-half the size of the right. The left arm became partially flexed at 130°. The last acute exacerbation involved the feet and ankles. There was no previous history of serious illness. The tonsils were removed empirically in 1931 with no change in the arthritic symptoms. Examination: There are dinner-fork deformities in both hands, the grip is broken, and it is difficult for him to touch the palms with the finger-tips. The left elbow is partially fixed at 130° and the shoulder is partially ankylosed. The feet are painful, swelling being marked over the right lateral malleolus. There is pain on motion of the toes, which are moderately restricted. Diagnosis is multiple infectious arthritis with fibrositis and moderate fixation.

Previous treatment consisted of colonic irrigation, once weekly for a year; x-ray treatment to joints, twice monthly for one month; change of climate, six months; infra-red, weekly for 10 years; baths, weekly for 10 years; massage, twice a week for 10 years; hydrotherapy, weekly for 10 years; diathermy, monthly for six years.

The laboratory findings showed hemoglobin, (17 grams); erythrocytes, 4,900,000; leukocytes, 9,400; urea nitrogen, 16.9 mgs.; non-protein nitrogen, 34.6 mgs.; cholesterol, 222 mgs.; sugar, 93 mgs.; creatinine, 1.3 mgs.; uric acid, 4.4 mgs.

On June 28, 1938, Aciform II injections were given and continued twice weekly over a period of three months. Injections were made into the ankles, cervical spine, shoulders, and the left arm. The therapy relieved pain in all joints with the exception of the elbows. Since the pain and swelling in the hands has been relieved, the function has been restored and the grip has returned to 80% of normal.

Case 19. A housewife, aged 60, for 13 years had persistent pain and deformity in the shoulders, hands, elbows, knees, and feet. There had also been pain in the jaws and back. She was persistently demoralized by weakness, fatigue, and mental depression since the onset of her symptoms. The patient never had a major illness or injury in

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her adult life. As a child she had measles and mumps. Despite these indications, her tonsils and eight devitalized teeth had been removed empirically without aiding her.

Physical findings: These include dinner-fork deformities in both hands together with swelling about the knuckles. All the deformed joints that were swollen were crepitant. Diagnosis was [illegible] atrophic arthritis.

Previous treatment: Aspirin, daily for 10 years; vitamin D, three capsules daily for one year; diathermy, weekly for one year; heat and local baths, twice weekly for 10 years; vaccine, every four days for four years; and removal of foci. Under the vaccine therapy, the pain disappeared from the shoulders, hands, wrists, elbows, and feet, but the pain persisted in the knees and back with no change in her gait.

Laboratory findings: Hemoglobin, 92%; erythrocytes, 6,140,000; leukocytes, 11,000; sedimentation rate, 18 mm. per 39 minutes; blood sugar, 117 mgs.; and cholesterol, 294 mgs.

Aciform injections were begun on June 28, 1938, and to the time of this writing, have been given twice weekly for four months. These injections have been directed at the lumbosacral region and knees as indicated in Figs. 2 and 3.

The pain in the back as well as the pain and swelling in the knees has been relieved more in the four months of parenteral acid therapy than during the entire four-year period of previous treatment described.

Case 20. A physician, aged 69, complained of pain in the lumbosacral region after an acute onset in February, 1938. The pain was intense over the lower back and radiated down the course of the right sciatic nerve to the external malleolus, with intense discomfort, anteriorly and posteriorly. By June, 1938, the pain had so increased in severity that the patient was unable to use the right leg. An eight weeks' period of hospitalization ensued. After intensive, daily treatment over this period, he became ambulatory only with the use of a crutch and a cane. The pain remained unabated and the discomfort was evident on both rest and motion. The patient was restless at night because of pain and resorted to the use of mild hypnotics.

Physical examination revealed muscle spasm over the low right back with a compensatory lateral curvature of the spine. Pain was present over the entire lower back and along the course of the sciatic nerves, more particularly on the right. There was considerable limitation of motion over the back.

X-ray study showed extensive bony spurring on the bodies of the vertebrae in addition to considerable ankylosis of the spine. Bony changes characteristic of atrophic arthritis were shown on roentgenograms of the knees, ankles, feet, and sacroiliac joints.

Previous treatment consisted of salicylates, three times daily for six weeks; concentrated vitamins A-B-C, daily for six weeks; diathermy, infrared treatments, daily for eight weeks; physiotherapy (Sitz baths, diathermy, and ultra-violet treatments), daily for eight weeks; removal of foci. This course of treatments was effective only to the extent that the patient became ambulatory with the aid of a crutch and cane. Pain, muscle spasm, and limitation of motion, however, showed only partial improvement.

Aciform II treatments were instituted on October 12, 1938, and were continued over the period of one month with treatments every fourth day. Injections were given along the course of the lower spine and into the gluteal regions as shown in Figs. I-B and 3.

After a month of treatment, the patient discarded both crutch and cane. The spastic muscles were relieved immediately after the second injection. The back is now straight and there is complete freedom of motion in all directions. The patient has been completely relieved of pain over both the back and the right leg and there has been no recurrence over the period of observation. The use of hypnotics for sleep has been discontinued and the patient now notices no fatigue.

The Statistical and Clinical Evidence

THE following compilation and summary represents the results of treatment with this new parenteral acid therapy in our series of 105 cases.

Our experience shows that the parenteral acid therapy used can be safely injected subcutaneously, intramuscularly, and perineurally. Intraneural injections are painful, but these can be avoided inasmuch as perineural injections provide maximum benefits. We have hesitated to inject paravertebrally because of the pain which has been demonstrated in intraneural injections. Epidural injections, in our experience, provide no benefits.

We have confirmed the experiences of others who have investigated this new parenteral acid therapy over a period of years, and we have found no reactions, such as the formation of fibrous tissue or other untoward sequelae.

The patient's willingness to try anything does not release the physician from the necessity of adopting a critical attitude in any therapy and of exercising care to avoid harmful reactions.

Equally important is the physician's obligation to avoid the application of a "favorite" therapy to the exclusion of those in which favorable results have been demonstrated.

It is not uncommon to find well-trained and experienced internists using therapeutic methods and repeatedly ending in failure without investigating the methods used by those who are obtaining results.

Summary

A PARENTERAL acid therapy has been clinically demonstrated by us during the last six months in various forms of arthritis — atrophic, hypertrophic, mixed types, gonorrheal, tuberculous, and rheumatic fever. It has effected favorable responses to treatment and relief of pain in cases representative of these types, as shown in Tables II and III.

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TABLE II

RESULTS OBTAINED IN 100 CASES AT THE HOSPITAL CLINIC AND IN PRIVATE PRACTICE

Number of Patients	Diagnosis	Number of Injections	Amount Per Injection in cc.	Complete Improvement (percent)	Marked Improvement (percent)	Slight Improvement (percent)	Negative (percent)
18	Arthritis	4-30	1-3	33.3	43.5	19.5	6.1
7	Sciatic Neuritis	1-6	1-3	28.5	28.5	28.5	14.3
6	Circumflex Scapular Neuritis	1-5	1-3	16.6	33.0	16.6	16.6
½	Lumbago	1	3-3	100.0			
3	Spinal Fusion (Neuritic Pain)	1-4	2-4	33.3		66.6	
1	Acute Arthritis**	4	3	100.0			
1	Bursitis	4	1		100.0		
1	Pain associated with osteomyelitis	1	3	100.0			
100							

** Pain and tenderness with acute swelling and redness of the left elbow. Pain relieved immediately and patient was able to resume work on masseuse on the third day of treatment.

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TABLE III

THE RELIEF OF PAIN, PRE- AND POST-OPERATIVELY, WITH PARENTERAL ACID THERAPY, PERMITTING THE OMISSION OF OPIATES

No.	Diagnosis	No. of Injections	Amount per Injection	Response
2	Fracture Os Calcis	1-2	1-3	Pain relieved 10 to 12 hours
2	Fracture Tibia	1-2	1-3	Pain and spasm relieved for 10 to 12 hours
1	Hallux Valgus	1	5	Pain relieved for 12 hours

In a total of 105 cases seen over a six months' period, 32.3% showed complete improvement; 42% marked improvement; and 19% slight improvement. In only 6.7% of the cases were the results negative.

This treatment, it is to be emphasized, is in no sense a panacea, nor is it advanced as the ultimate in the treatment of arthritis. However, in our experience in testing 105 cases, it has evidenced a superiority to other forms of therapy in: (1) rapidity of action; (2) absence of reactions; and (3) safety.

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FOCAL INFECTION AND ITS RELATION TO ARTHRITIS*

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Till term arthritis is confusing. But so is rheumatism, the popular name for the same disease. It is exceedingly difficult at times, if not impossible, for medical science to select a nomenclature that can fully explain to the lay mind the nature and ramifications of the disease in question. Nature in medicine should give some information as to the event or sequence of events brought about by an ailment. Unfortunately, many a disease was labeled before its cause had been discovered. Often, after an individual organism had been designated as the origin of the disease, the name chosen to it connected the events produced with the individual organism. But when it was found that a group of organisms could be responsible for the same symptoms and the same events, it was obviously impossible to describe the condition with the accepted name.

Medicine has been in the habit of using the terms arthritis and rheumatism interchangeably for years. The textbook definition is: "A constitutional disease marked by inflammation of the connective tissue of the body." The definition was applied before bacteriology had become an accepted science. Since then, in the desire to be explicit, bacteria having been considered as the causative agents, the name was continued still more by the layman by adding "itis" to the name of each inflamed anatomic structure in order to designate the individual disease. Should the skin become inflamed the condition is called dermatitis; if the muscle is affected, myositis; the nerves, neuritis; the tendon, tenonitis; the cartilage, chondritis; and the joint, arthritis. All these various ailments with their own symptoms and manifestations are collected under the one general term, arthritis, and the public is expected to grasp its meaning.

Arthritis may be caused by many organisms although the most common causative agent of this disease is the streptococcus. But the term streptococcus designates a group of organisms; therefore, when it is named as being responsible for a disease, the statement is not very definite. When the physician is in doubt about the nature of the etiologic factor, he usually resorts to the term infection.

Organisms act in a mysterious, puzzling way. This should be kept in mind in order to understand the difficulty in naming the cause of a sequence of events which may last for months or years. Organisms act the same as certain families of animals do. Different members of the same animal family will exhibit distinctly different habits. Then why should different members of the same family of organisms behave identically? In the rodent family, for example, the squirrel runs up a tree and a rat into a hole in the ground. The strange manifestations of familiar animals are taken for granted, but the erratic behavior of microscopic organisms is subject to theorizing without taking into consideration that their study is far more difficult than that of animals visible to the naked eye. Usually, an obscure name is given and this seems to satisfy the majority of us in the basis endeavor to solve the problem.

Some infectious diseases have their beginning with a focus of infection. A focus of infection is "an area of tissue infected with disease causing organisms." When the words focus and local were first given to the medical profession, they carried with them the idea of a pocket of pus. This pocket was, of course, located within the person and the current belief was that the patient's only chance to be cured of the disease was to have the pocket of pus removed. This has been a common procedure when dealing with arthritis.

Often arthritic patients have been cured by having the pus-producing organisms removed by surgical measures. Unfortunately, only a small percentage of the cases of arthritis are caused by pus-producing organisms. Arthritis is a chronic disorder. Chronic conditions are difficult to treat in an event. But the cure of arthritis is made more difficult by the short-cuts offered patients who are naturally eager to be freed of disease. Most of the so-called cures offered to the arthritic patient are a challenge to his courage. The treatments are mutilating. Many different organs, such as the teeth, tonsils, gallbladder, appendix, uterus, tubes, and ovaries, may be involved; and, therefore, the disease can be attributed to various causes. Many patients have been benefited by the removal of one or more of the organs mentioned. But in many others, the disease remains as persistent as ever after the specialist removes the organ he is particularly qualified to remove.

Usually, the operating specialist plays no part in the later treatment of the disease. He is either inexperienced or not interested in treating the disease itself. When several specialists are employed, each functioning in his limited field, there is apparent an absence of coordinated effort. The wreckage is correspondingly increased; thus, with the presence of many specialists there is an absence of coordination and a great deal of harm is done. The dentists are in a fortunate position; that is, they can repair some of the injury.

There is no denying the fact that people have been restored to health by submitting to operations. The point is that the mechanical procedures and the men trained to do them are far more numerous than the diagnosticians who decide when and where these procedures are indicated. If for each specialist trained to perform these mechanical procedures ten men would be trained to decide when the work is indicated, dentistry and medicine would undoubtedly be applied to better advantage and the amount of harm done would be lessened.

What is being done about this human wreckage? What specialists are being trained to care for it? Who is willing to go through the preparatory course to fit himself for this work? Who will devote himself to the task of teaching these partly incapacitated human beings how to adjust to real

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just themselves so that they may function efficiently?

The three most common chronic disorders attacking mankind today are tuberculosis, syphilis, and arthritis. All three of them were described and classified in our medical literature many years before the organisms causing them were discovered. Because these diseases behave so similarly and show so many similar symptoms, and because any two of the three diseases can and will occur at the same time in the same person, they are often mistaken for each other.

Tuberculosis, like arthritis and syphilis, is a chronic disorder. We have gradually come to understand that about all the general profession can contribute to the diagnosis. The earlier the diagnosis is made, the better the prospects for the patient. But it took many years to find out that the various specialists had little to offer the chronic sufferer. The greatest lesson to learn was not to overtreat the patient. It was discovered that rest in bed was the proper treatment. The patient no longer, as a rule, goes from surgeon to surgeon, trying to have the infection cut out by having the teeth, the gallbladder, or the appendix removed. There are some tuberculous patients with abscessed teeth and diseased gallbladders. But the physician has become conservative. He is inclined to overlook these associated disorders. He tries rather to restore to such a patient a different kind of health with which to combat tuberculosis. Many persons have recovered from tuberculosis despite diseased tonsils and pulpless teeth.

Not many years ago the focus of infection in syphilis was supposed to be the chancre; therefore, it was cauterized and burned out. If the treatment of syphilis were limited to the removal or amputation of the first lesion to appear, this disease would be of little consequence. But it is common knowledge today that by the time the chancre appears, the organism responsible for this disease can be found in the walls of the blood vessels throughout the body.

Let me repeat that in both tuberculosis and syphilis the hardest lesson to learn was not to overtreat the patient. This is also true of arthritis. The medical profession learned, after years of mistakes, that it met with dismal failure when it attempted to cure both syphilis and tuberculosis through the removal of the focus of infection. Again, the same is true of arthritis. There are times when this procedure works like magic. But a few spectacular successes are misleading. When the risks are so great, it is well to *know* when it is safe to operate and when the results will be disastrous. Few patients have been cured of arthritis by the extraction of all their teeth. I have had ample opportunity of meeting many who have made this sacrifice in vain, while some have been materially benefited.

Why then does the arthritic patient still submit to operations? No doubt for the reason that he is still to be found near the springs and mud baths. He is always going somewhere, trying everything, following any kind of advice. What syphilitic or tuberculous patient asks advice of anyone but the physician today? Not long ago such patients went freely about to many climates and springs to have the disease boiled out of them. Again, history repeats itself. Arthritic patients follow the same road today. The Law began to move against tuberculosis and Public Opinion against syphilis. The Law moved because tuberculosis is a communicable disease, and Public Opinion ostracizes the syphilitic person as one to be shunned and scorned. Tuberculosis and syphilis became problems for local jurisdiction. How many years will it be until this is the case with arthritis? Today most physicians who treat tuberculosis or syphilis find it necessary to devote their entire time to these chronic cases. But not so in the case of arthritis. And tuberculosis is not so cruel as arthritis. The tuberculous patient in an extreme stage, even with death close at hand, is quiet and peaceful. He gives little trouble to the one who goes to his aid. Even syphilis is kinder than arthritis. The factor of pain does not disturb the patient so often. At times the disease attacks even the brain and dulls the senses so that the patient does not realize his plight and loses all measure of responsibility.

Cruel as arthritis is, few of its victims lose their senses. Through the developing stages and the tormenting stages, the patient is still able to get around and is strong enough to go from physician to physician—strong enough to travel through his own and other countries in search of help. He never surrenders until poverty has overtaken him and he has no more money with which to fight the enemy. And only then does he become a local problem. It is difficult to advise the patients with this chronic disturbance in the early, acute stages of the disease. The cure does not lie around the corner and this violent manipulation or that particular operation will not restore them to health and usefulness in a few hours or a few days.

The treatment is a long, drawn-out process, requiring much patience, a difficult problem for which the optimistic surgeon is equipped neither by inclination nor training. It is necessary for the physician to observe these patients for years in order to study and understand the course of the disease. He has been baffled and disappointed many times when he expected the same disease to behave in the same way with every patient. But why should he expect constant behavior? The other two diseases mentioned are each caused by a single destructive organism and the variations arise because of the point or points attacked and because of differences in individuals. There are many different kinds of streptococci, and, in the case of arthritis, the clinical variations arise because of the varying characteristics of the organisms.

It is difficult to give a clear-cut picture of the many complicated problems arthritis presents. First of all, there is the close study of the streptococcus, the organism that is the common cause of this disease. Unfortunately, the streptococcus also causes numerous other diseases, such as erysipelas and scarlet fever. The early manifestations of some of these ailments strongly resemble the symptoms of tuberculosis or syphilis.

The many different kinds of streptococci are capable of manifesting themselves in many different ways. They produce various lesions throughout the body. They attack various organs; they behave in about the same way a man behaves in that a man will behave in a different way when he is alone and when he is with his fellows. A man's behavior as a solitary creature is different from his gregarious behavior. And so it is when each type of these various organisms is numerous. The patient is devastated by the multiplicity of streptococci which can and do deform extremities and alter vital organs, and then numerous specialists attempt to restore the arthritic patient to usefulness and health by resorting to manipulations peculiar to the limited field of each. The man is to be envied who can so concentrate his work that the extraction of teeth or the removal of tonsils discharges his duty to the patient. If the dentist or nose and throat specialist had to live with the patient, if he could know and see the injury done to the heart, kidneys, and other organs, his conscience might not allow him to function so many times with so little regard for what might follow his simple operation.

The accompanying illustrations show how rapidly destruction may

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strike after the removal of an infected organ or tooth.

It is known that streptococci originating in a tooth will at times behave in the same manner as the organisms spreading from an infected tonsil. These two types of streptococci can be present at the same time, causing symptoms that at first glance seem trivial or similar and yet each kind requires a specific treatment. That is the great difference between tuberculosis and syphilis on the one hand and arthritis on the other. The name syphilis denotes an individual organism. The name tuberculosis denotes an individual organism. But the name arthritis is descriptive of a numerous clash of organisms. And of this clash each individual organism has its own characteristics. Any one or a group of them may be the active agent or agents of the disease. In order to be able to select the proper reacting organism, for intelligent use in diagnosis and treatment, the physician must have access to a well equipped laboratory where in pure culture he can keep the various organisms liable to cause the disease.

When physicians give the arthritic patient advice what they tell him does not really apply to the individual patient. It applies to many hundreds of these patients. Physicians merely use their experience in medicine. They offer to the individual patient a procedure that has been successfully demonstrated as of beneficial help in a large number of similar cases. This should be true of the advice given by the dentist to his patients. When a dentist disturbs teeth to correct disease he does so, not because he is certain of helping the patient, but because he knows the suggested treatment has helped many others.

When a hundred arthritic patients are treated, an important factor to consider is what percentage can be relieved to usefulness and happiness. Simple manipulation on a particular procedure will help a certain percentage and this percentage must be large enough to justify the procedure about the patient; otherwise, it is little more than guesswork and experimentation.

These statements do not refer to the general practice of the dentist; they do not refer to the 90 per cent who come to his office in the routine of the day. They apply to the 10 per cent of his patients that are sent to him by a physician for his help in the correction of disease. I obtained this information through a questionnaire that was sent to every practicing dentist in Chicago. This 10 per cent is worthy of consideration.

According to the questionnaire there exists a growing tendency among the dentists to consult with a physician in isolated cases. To be exact, four patients out of every thousand are requested by the dentist to go to a physician for diagnosis before he will start any procedure. If this precaution were extended to the entire 10 per cent in question, the coordinated effort of the medical and dental professions should prove of incalculable value to the patient with arthritis or other infectious ailments.

The questionnaire showed that the dentists of Chicago have a greater percentage of natural teeth than the physicians; the laity lags far behind both of them and the arthritic patients are far behind the general public. A few statistics may prove of interest. The information was assorted in accordance with the various decades of life, from the ages of 20 to 30 up to the ages of 70 to 80. During the first period the dentists average 91.27 per cent; the physicians, 89.1 per cent; the laity, 79.1 per cent; and the arthritic patients, 59.3 per cent. During the last period the dentists average 53.46 per cent; the physicians, 51 per cent; the laity, 46 per cent; and the arthritic patients, 8.2 per cent.

These statistics are no doubt indicative of existing conditions all over the country. There are few dentists among my patients in the practice of treating infectious diseases, far less in number than physicians, not to speak of the laity or the arthritic patients. It is obvious that good dentistry is of primary importance in preventive medicine.

Arthritis is one of the most common diseases in which the teeth are suggested as the etiologic factor. In the majority of cases the infected teeth are discovered by the routine examination. If this is the case, what should the procedure be?

According to standard medical text books arthritis can be caused by many kinds of organisms, and this has been proved beyond a doubt by bacteriologic study.

Some arthritic patients have been permanently cured by the removal of abscessed teeth. Others have been temporarily or permanently improved. But some have been temporarily made worse or even permanently crippled by the removal of these teeth.

Should the dentist be confronted with this problem about his own teeth, he would no doubt insist on the following information before he would allow his teeth to be disturbed:

1. How long had the arthritis been present before the abscessed teeth were discovered?

2. Were these abscesses silent ones, discovered by the roentgenogram; or were the teeth disturbing the patient and causing symptoms that brought him to the dentist?

3. What joints were involved, the large joints or the small ones?

4. Was the pain in the joints present only on motion or also when the joints were quiet?

5. Were the small joints swollen and the large joints free from swelling, redness, heat, and tenderness on pressure?

6. What was the condition of the blood?

7. Was the patient anemic?

8. Did he have 100 per cent hemoglobin, 90 per cent, 80 per cent, or 70 per cent?

9. Did he have 5,000,000 red cells, 4,000,000, or 3,000,000?

10. How many leukocytes were present?

11. Did a rise in temperature exist? If so, how long had it been present?

12. Was the urine free from sugar and was the blood sugar normal, especially in patients around the age of 50?

13. What was the blood pressure?

Where infection is present, the few simple, precautionary tests, necessary for the patient's protection as well as the operating dentist's protection, can be obtained in a short time by the average office assistant or nurse. The time required for the tests is as follows: red blood count, eight minutes; white blood count, four minutes; differential count, from twelve to fifteen minutes; hemoglobin determination, two minutes; temperature, two minutes.

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Fig. 1

Fig. 2

Fig. 1—Before removal of tooth.

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Fig. 2—Same patient as in Fig. 1, two days later, permanently blind.

Fig. 3

Fig. 4

Fig. 3—Before removal of tooth.

Fig. 4—Same patient as in Fig. 3, dying of endocarditis which appeared four days after removal of tooth. Petechial hemorrhages, positive blood culture, and rapid clubbing of fingers were present.

Fig. 5

Fig. 6

Fig. 7

Fig. 5—Removal of tooth caused rapid destruction of eye.
Fig. 6—Another patient in whom removal of tooth caused rapid destruction of eye.
Fig. 7—Tooth extraction caused rapid destruction of eye.

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Certain facts about the previous health of the patient should also be obtained:

1. Is this the first time the patient has had this condition? It must be borne in mind that arthritis is one of the most common conditions that has a tendency to recur.

2. If the patient has had previous ill health during his adult life, what were the diseases?

3. Is there a history of an impaired or infected heart, or acutely or chronically involved kidneys?

4. Has the patient had tuberculosis or syphilis, recently or some time ago?

5. Is this the first time the teeth have ever been suggested as the cause of ill health? If they have previously been disturbed and previous abscesses were removed, what effect did this procedure have on the disease at the time? Was the disease made worse or temporarily improved?

6. If the condition has recurred, what interval followed the preceding attack, months or years?

7. Has the patient ever had diabetes?

8. What is the age of the patient?

9. Is he at a time of life when one can reasonably assume that other organs of his body are going through the same changes as the teeth?

These questions should give a fair history of the patient. A few hours spent with the patient in order to get better acquainted with him and the condition of his health may save him years of suffering.

Should the dental surgeon not be equipped to spend the time necessary in the laboratory work, he certainly would be justified in requesting the physician who referred the patient to him to furnish him with this information before he assumes any responsibility in entering into a procedure without having the protection to which he is entitled. When he enters the field of medicine and does a definitive procedure which may be the beginning of chronic metabolism he should be acquainted with the possible hazards. This is one of the reasons why the dental and medical professions cannot be separated. The tragic result of the division of their responsibilities can be observed in hundreds of cases. The dentist and the physician should cooperate at all times.

It has taken years to give both the patient and the surgeon these protections when tonsils were removed. The same kind of harm and the same difficulties that are liable to follow the extraction of teeth may follow a tonsillectomy. In class A hospitals, physicians are prohibited from performing tonsillectomies until after a physical examination has been made and the temperature, the blood count, and the clotting time of the blood have been recorded.

When technical procedures are instituted to relieve the patient, the utmost protection should be accorded both patient and operating surgeon. No one performs more careful, meticulous work before entering into a procedure than the physician about to do a blood transfusion. Why? A blood transfusion does not require as much skill and training as the extraction of a tooth. But in one procedure the reaction is prompt, immediate, while the effect of the other is a matter of conjecture. There is no escape from criticism for the operator who does the transfusion. In most instances, when the dentist extracts teeth he is saved from immediate embarrassment. The fuse he has lighted is a long one and the explosion may not take place for a week, a month, or even several months. It is because of this delayed reaction that it is possible for him to proceed with this simple operation without the necessary preparations to safeguard the patient and himself from the events that may follow. Logically, the operating dentist should be just as careful as the physician performing a blood transfusion. It is a mistake of his to disturb teeth solely at the suggestion of a physician without insisting on the necessary data to protect himself.

The opinions of authorities regarding the benefits following the removal of infected teeth, devitalized teeth, and the so-called dead teeth are conflicting. Standard textbooks used in the medical schools bring such statements: "The removal of infected, devitalized and dead teeth is still a mooted question." and "Remove all infected, devitalized and dead teeth." It is such a mooted question when no concerted opinion can be found.

Because of the extensive literature of both the medical and dental professions, dentists are, in most cases, not familiar with the matters; therefore, they often find themselves in a quandary as to how to proceed, not having ready references at hand to support their judgment and accept the word of an *individual* physician as authoritative and act on his opinion.

While the organisms responsible for the different diseases may or may not be known today, their portal of entry is as mysterious as ever. The mere mention of teeth as one of many possible sources of disease has been pounced upon and interpreted by a certain type of specialist, who, using this authority in his own way, advises as a cure the removal of teeth when treating infectious diseases; while the textbook, no doubt, means to convey to the student the fact that this procedure will provide the patient with better health, and consequently greater resistance to combat the disease. It is the responsibility and opportunity of the dental profession to extend this kind of health service to arthritic patients and to the public generally.

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26 UNITED STATES OF AMERICA,

BEFORE FEDERAL TRADE COMMISSION.

* * (Caption—5691) * *

ORDER DENYING RESPONDENTS' MOTION FOR A HEARING.

(Received Oct. 25, 1951. Secretary, Federal Trade Commission.)

At the hearing held in the above-entitled proceeding in Buffalo, New York, on October 17, 1951, counsel for the respondents moved for a further hearing to be held in Chicago, Illinois, for the purpose of permitting him to present expert opinion testimony in surrebuttal, and the trial examiner having considered said motion and being of the opinion that the proposed testimony in surrebuttal would be merely cumulative in effect,

It Is Ordered that the motion of counsel for the respondents for the holding of a further hearing for the purpose of presenting expert opinion testimony in surrebuttal be, and hereby is, denied.

Abner E. Lipscomb,
Trial Examiner.

October 24, 1951.

27 UNITED STATES OF AMERICA,

BEFORE FEDERAL TRADE COMMISSION.

* * (Caption—5691) * *

ORDER TERMINATING THE RECEPTION OF EVIDENCE AND INVITING COUNSEL TO SUBMIT PROPOSED FINDINGS.

(Received Oct. 25, 1951. Secretary, Federal Trade Commission.)

It Is Ordered that the reception of evidence in the above-entitled proceeding be, and hereby is, terminated as of this date.

It Is Further Ordered that December 3, 1951, be, and hereby is, designated as the date on or before which counsel may, at their election, submit proposed findings, conclusions and order.

Abner E. Lipscomb,
Trial Examiner.

October 24, 1951.

* * * * *

32 UNITED STATES OF AMERICA,

BEFORE FEDERAL TRADE COMMISSION.

* * (Caption—5691) * *

PROPOSED FINDINGS, CONCLUSIONS AND ORDER SUBMITTED BY COUNSEL SUPPORTING THE COMPLAINT.

(Received Nov. 30, 1951. Secretary, Federal Trade Commission.)

To Hearing Examiner Abner E. Lipscomb:

Pursuant to Rule XXI of the Rules of Practice of the Federal Trade Commission, Joseph Callaway, attorney supporting the complaint in the above-entitled proceeding, submits to the Hearing Examiner his proposed findings, conclusions and order therein, together with the reasons therefor as hereinafter set forth:

First Proposed Finding:

Respondent Rhodes Pharmacal Company, Inc., is a corporation organized under the laws of the State of Ohio, and having its office and principal place of business at 1814 East 40th Street, Cleveland, Ohio.

Respondents J. Sanford Rose and Jerome H. Rose are respectively the President and the Vice-President and Treasurer of Rhodes Pharmacal Company, Inc., and have offices and places of business at 1814 East 40th Street, Cleveland, Ohio. The said individual respondents are now and at all times mentioned herein have been in control of the management, policies and operation of Rhodes Pharmacal Company, Inc., particularly in respect to the acts, practices, and methods herein alleged.

Reasons for Proposed Finding:

Paragraph One of the complaint is admitted in answer.

Second Proposed Finding:

Respondents are now, and have been for more than two years last past, engaged in the business of manufacturing, selling and distributing a certain drug product, as "drug" is defined in the Federal Trade Commission Act.

33 The designation used by respondents for the said product, and the formula and directions for use thereof are as follows:

Designation: Imdrin.

Formula: Each tablet contains—

Acetylsalicylic acid	1.9 grains
Manganese salicylate	1.5 grains
Calcium succinate (anhydrous)	2.3 grains
Caffeine	.16 grains
Thiamine chloride	1 mg.

Directions: Two tablets before each meal with water.

Respondents cause the said product, when sold, to be transported from their place of business in the State of Ohio to purchasers thereof located in other States of the United States and in the District of Columbia. Respondents maintain and at all times mentioned herein have maintained, a course of trade in the said product in commerce between and among the various States of the United States and in the District of Columbia. Respondents' volume of business in such commerce is substantial, sales for the last quarter of 1948 being in excess of $250,000.00.

Reasons for Proposed Finding:

Paragraph Two of the complaint is admitted in answer.

Third Proposed Finding:

In the course and conduct of their business, the respondents, subsequent to March 21, 1938, have disseminated and caused the dissemination of certain advertisements concerning Imdrin by the United States Mails and by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act, for the purpose of inducing and which were likely to induce its purchase.

Among their advertisements are the following:

Radio continuities which were placed subsequent to September 1, 1948, for respondents by their advertising agency with, and broadcast by various radio broadcasting stations, including, but not limited to, the following stations:

34 WJJD—Chicago, Illinois
WHN—New York, New York
WPIX—New York, New York
WOV—New York, New York
KWTO—Springfield, Missouri
KWKH—Shreveport, Louisiana
WWVA—Wheeling, West Virginia

Advertisements which were prepared subsequent to September 1, 1948, for respondents by their advertising agency, and published or caused to be published by said respondents in various newspapers, including, but not limited to the following newspapers and issues thereof:

Washington (D. C.) "Times-Herald"—Issues of March 11, 24 and April 18, 1949.
Washington (D. C.) "Daily News"—Issue of March 15, 1949.
Washington (D. C.) "Post".
Baltimore (Md.) "Sun".
Philadelphia (Pa.) "Bulletin".
Philadelphia (Pa.) "Inquirer".
Birmingham (Ala.) "News Age Herald".
Cleveland (Ohio) "Plain Dealer"—Issues of January 9, 16, 23, 30, February 6, 13, 1949.
Syracuse (N. Y.) "Herald Journal"—Issue of February 17, 1949.
Rochester (N. Y.) "Times"—Issue of January 27, 1949.
Bluefield (W. Va.) "Daily Telegraph"—Issue of April 1, 1949.
Seattle (Wash.) "Daily Times"—Issue of March 11, 1949.
Atlanta (Ga.) "Constitution"—Issue of March 10, 1949.
Washington (D. C.) "Star"—Issues of April 26, 19, 1949.
Indianapolis (Ind.) "News"—Issue of February 15, 1949.
Baltimore (Md.) "American"—Issue of May 7, 1949.

New Orleans (La.) "States"—Issues of November 18, 1948, and April 27, 1949.
South Bend (Ind.) "Tribune"—Issues of February 13, 1949 and March 27, 1949.
Shreveport (La.) "Times"—Issue of March 13, 1949.
Baltimore (Md.) "News-Post"—Issue of January 14, 1949.
Syracuse (N. Y.) "Herald Examiner"—Issue of January 16, 1949.
St. Louis (Mo.) "Globe Democrat"—Issue February 13, 1949.
Clarksburg (W. Va.) "Exponent-Telegram"—Issue of March 13, 1949.
Boston (Mass.) "Daily Record"—Issue of March 15, 1949.
Rochester (N. Y.) "Sun"—Issue of April 14, 1949.
St. Paul (Minn.) "Pioneer Press"—Issue of January 23, 1949.
35 New York (N. Y.) "Sunday News"—Issues of January 16 and 30, 1949, February 27, 1949 and May 15, 1949.
Cedar Rapids (Ia.) "Gazette"—Issue of March 13, 1949.
Springfield (Ill.) "Illinois State Journal"—Issue of January 21, 1949.
Louisville (Ky.) "Times"—Issue of February 11, 1949.
Chicago (Ill.) "Tribune"—Issues of January 1, 19, 21, 26, 28, 31; February 4, 7, 9, 12, 13, 21; March 6, 13, 27, 30, and April 19, 1949.

Counter cards and folders.

Respondents have also disseminated and caused the dissemination of the advertisements referred to above for the purpose of inducing, and the said advertisements were likely to induce, directly or indirectly, the purchase of Imdrin in commerce, as "commerce" is defined in the Federal Trade Commission Act.

Reasons for Proposed Finding:

Paragraph Three of the complaint is admitted in answer.

Fourth Proposed Finding:

Through the advertisements in evidence, respondents have represented directly and by implication that Imdrin is an adequate, effective and reliable treatment for, will

arrest the progress of, will correct the underlying causes of, and will cure all forms of rheumatism and arthritis, including neuritis, sciatica, neuralgia, gout, fibrositis and bursitis.

Reasons for Proposed Finding:

Respondents' advertising sets forth certain symptoms as indicating the presence of some form of arthritis. The advertising then says that Imdrin will relieve those symptoms. For instance in Comm. Exs. 12, 15, 16, 17, 18, 19 and 20, it is stated that Imdrin is for victims of arthritis, neuritis, sciatica, and neuralgia (underscoring supplied). In the same advertisement, in the right-hand column under the heading, "Where Rheumatism Strikes and How to Detect It", the statement is made "All forms (of rheumatism and arthritis) cause pain, frequent swelling, and possible loss of function of joints".

This is only another way of saying that rheumatism in all its forms may be detected by pain, swelling, and stiffness, or loss of function of joints. Then when Comm. Exs. 2, 3, 4, 5, and 6, say that Imdrin "stops the pain", "causes stiffness and swelling" of arthritic or rheumatic conditions "to disappear, often over night", "prolonged freedom from pain", "for them the aching joints and muscles are a thing of the past", this is only another way of saying that Imdrin will do away with the symptoms which are present in all forms of arthritis and rheumatism and hence cures it.

Comm. Ex. 13 is addressed in the left-hand column to sufferers from rheumatism, arthritis, neuritis, sciatica, gout, and neuralgia. Sufferers from bursitis and fibrositis are included among those addressed in Comm. Ex. 37.

Other representations implying a cure are innumerable. Comm. Exs. 12 through 20 and others all bear the heading "Amazing New Discovery for Rheumatism, Arthritis". "For", as thus used means a "cure, mitigation, treatment or prevention of". *Positive Products Co.* v. *F. T. C.*, 132 F. (2d) 165. Those who have suffered from any form of arthritis for 20 years are promised a "happy comfortable life", and a "more normal active life" (Comm. Exs. 19, 20). The least they could infer from these promises is that the progress of the disease from which they were suffering would be arrested.

Another implication of Imdrin arresting the progress of

the disease is contained in the following statement, taken from Comm. Ex. 37 under the heading "No More Blue Days":

"In addition, the mental depression that sometimes resulted from therapy in these ailments was not found to be of major significance, when Imdrin was used as indicated. 'Blue days' disappeared and patients resumed their usual cheerful outlook on life. This is of utmost importance, since there seems to be a definite relationship between the onset of arthritis and mental condition." (Underscoring supplied.)

In an advertisement addressed to sufferers from arthritic condition, the following, also taken from Comm. Ex. 37, could only mean that the underlying cause of their condition is an inadequate functioning of the vital enzyme systems of the blood and bones, and that a restoration of such functioning, and therefore a removal of such underlying cause, is promised by the use of Imdrin:

37 "For aid in insuring adequate functioning of the vital enzyme systems (biochemical catalysts) of the blood and bones, manganese salicylate and calcium succinate, have been combined with other ingredients for maximum effect."

Other indirect promises of a cure are contained in the two horizontal rows of pictures used in Comm. Ex. 20 and in other exhibits. Although the subheading above the first row of pictures, referred to, only talks about relief of pain and suffering, these pictures of invalids in the first row, followed by the picture of the woman bowling and the man playing golf, are a clear implication that by taking Imdrin, the invalids pictured in the first row were enabled to bowl and play golf. Nor is the implication in any manner offset by the words "Posed for by Professional Models" in small type, following the asterisk, further down in the advertisement.

Moreover, the general tenor of the newspaper advertisements, the use of such words as "amazing new discovery", comparison with "wonder-working drugs, Sulfa and Penicillin", statements that Imdrin "works internally toward amazing reduction of pain, heat, redness and swelling in the joints" and that by using Imdrin, sufferers from arthritic conditions can "live happy, comfortable lives again"

even though they may have "suffered, waited and hoped for 20 years",—the tenor of these advertisements is calculated to deceive even those who have had arthritic disorders for a long time, even those who have made the rounds of various doctors' offices, without being cured, those whose "cases (are) deemed almost hopeless".

Since these advertisements represent that Imdrin will arrest the progress of, remove the underlying cause of, and cure the various kinds of arthritis and rheumatism, the preparation is also certainly represented as an adequate, effective, and reliable treatment for such conditions. It might be possible under some court decisions to represent a preparation as an adequate, effective, and reliable treatment, without representing it as a cure, but there are no court decisions to the effect that a cure is not an adequate treatment. Such would be an absurdity.

For the Trial Examiner to be sure that all the conditions enumerated in the fifth proposed finding are included in the advertisements, Comm. Ex 1 is addressed to sufferers from arthritis, rheumatism, sciatica, and neuritis. Victims of neuritis, sciatica and neuralgia are particularly appealed to in Comm. Ex. 12. Victims of gout are among those particularly addressed in Comm. Ex. 13. Victims
38 of bursitis and fibrositis are also appealed to in Comm. Ex. 37. Of course, all of the advertisements are addressed in general to sufferers from arthritis and rheumatism, without distinction as to kind, and without regard to cause.

What has been said up to date in support of proposed finding number five is based entirely on a review of the advertisements per se. It is a well-recognized principal of Federal Trade Commission law that the Commission has the right to pass upon the meaning of advertisements by looking at the advertisements themselves (*Zenith Radio Corp.* v. *Federal Trade Commission*, 143 F. (2d) 29; *Charles of the Ritz* v. *Federal Trade Commission*, 143 F. (2d) 676).

There is, however, in the record the testimony of Dr. Rosenberg, and the testimony of Mr. Breiman, both intended as aids to the Trial Examiner and the Commission in ascertaining the meaning of the advertisements. There is also the testimony on cross-examination of two of respondents' user witnesses.

Dr. Rosenberg's testimony:

The qualifying of Dr. Rosenberg to interpret the meaning of the various advertisements as they would be understood by sufferers from arthritic and rheumatic disorders followed exactly the course approved in *Stanley Laboratories* v. *Federal Trade Commission*, 138 F. (2d) 388. See record, pp. 258-263. His direct testimony is in full support of the fifth proposed finding (R. pp. 283-312).

Respondents seemed to make much of the fact that in their preliminary cross-examination of Dr. Rosenberg, the following question was asked and answered as follows:

"Q. As I understand it, Doctor, the discussions essentially went to the therapeutic value of the drug is that right?

"A. Well, the possible therapeutic value is the most common subject discussed during such conversations." (R. p. 278.)

Respondents overlook the fact that Dr. Rosenberg had just previously stated that he and many patients commonly discussed the advertisements (R. p. 278). He had also previously stated that many patients had come to him with an advertisement, "We will say an advertisement of Imdrin and said, 'Here is a drug advertised as a treatment for my arthritis' " (R. p. 277). This would of
39 itself be an interpretation of advertising by the patient, even though the most common subject discussed was the therapeutic value of the drug.

Respondents also overlook the fact that Dr. Rosenberg also testified that "My patients frequently bring the advertisements to my office and read them to me and point out certain phrases in them and ask my opinion of them, discussing the subject of such remedies in general" (R. p. 260).

So respondents' counsel was wrong when he stated on the record on page 283 that "We here now demonstrate that there were actually no discussions going to the meaning of advertising of drug products and the consumer reaction thereto."

To ask Dr. Rosenberg to give the dates or circumstances of any discussion about advertisements of drugs that occurred next prior to his conversations with Commission Trial Counsel, which itself occurred several months prior to the time of this testimony,—this was manifestly unfair,

and his inability to do so does not detract from the value of his testimony.

Mr. Breiman's testimony:

The testimony of this witness may be considered in three different ways (1) as self serving declarations of the respondent in whose employ he was, (2) as of no value, because his inquiries were not directed to the particular purchasing public to whom the advertisements were addressed (R. pp. 740-742), and (3) as fully supporting the fifth proposed finding.

Under (1), Mr. Breiman's testimony was admittedly obtained for the purpose of this proceeding by a person in the employ of respondents. In that situation it allowed respondents to place their own interpretation on what was said by the persons interviewed, without those persons being offered for cross-examination, or the actual statements made by the persons interviewed put in evidence. The interviewer who stood in the shoes of the respondent gave us only the checkmark which he made by the name and address of the person interviewed. This is a far cry from introducing in evidence questionnaire sheets filled out by the various members of the public to whom they were sent. Suppose some of the persons interviewed by Mr. Breiman thought the advertisements exhibited to them meant both "pain relief" and "treatment and cure", as well they might. Suppose some of them were doubtful or hesitant about deciding between the two alternatives. There is no way for these situations to be shown. We only have a check mark which had to be put in one column or the other. Therefore, this gave respondents the right to interpret out of the presence of counsel supporting the complaint what was meant by the various answers obtained.

The statement of a party interested in the results of a lawsuit cannot be regarded as undisputed, if any reasonable inference can be drawn from facts or circumstances unfavorable to his conclusion. (*Harris* v. *Bush*, 196 S. W. 471, (Arkansas 1917).)

Under (2), the statement of the Court on this same point when it arose in another case may be of value. In considering the advertisement of the Ford Motor Company's 6% plan for purchasing a Ford car on credit, the court said that the advertisement must be considered from the view of prospective purchasers of Ford cars. (*Ford Motor*

Company v. *Federal Trade Commission*, 120 F. (2d) 175.) Even without this decision, it is elementary that respondents' advertising must be considered from the view of prospective purchasers of Imdrin, that is, those suffering from some form of arthritis.

Under (3) above, if the reaction to the advertisements by prospective purchasers, that is, those suffering from some form of arthritis, were shown to be similar to those persons interviewed by Mr. Breiman, (which has not been shown) the result is that on the basis of 7,000,000 sufferers from arthritis in this country (R. pp. 234, 235) between 8.7 per cent and 9.3 per cent would believe respondents' advertising represented a cure (R. pp. 731, 732). The half way point between these two figures is 9 per cent. This percent of 7,000,000 is 630,000 sufferers from various forms of arthritis who would think respondents' advertising meant a cure for them. This supports the allegations of the complaint. This is quite a sizeable group, a substantial portion of the purchasing public as alleged in paragraph Five of the complaint, who are deceived by respondents' advertising. They deserve protection at the hands of the Federal Trade Commission.

The Two User Witnesses:

The testimony of Mr. King Hayes and Mr. E. H. Carr on cross-examination bears out Dr. Rosenberg's interpretation of the advertising. These were two of respondents' user witnesses whose testimony is shown in the record at pages 844-845, and pages 902-906, respectively. It must be borne in mind that respondents' advertising directed to arthritic sufferers states that "all forms (of rheuma-
41 tism and arthritis) cause pain, frequent swelling and possible loss of function of joints". (Comm. Exs. 12, 15, 16, 17, 18, 19 and 20.) Other advertisements state Imdrin "stops the pain", "causes stiffness and swelling" of arthritic or rheumatic conditions "to disappear, often over night". Dr. Weisberg, respondents' expert, said Mr. King Hays had gout which is a form of arthritis (R. p. 833) and that Mr. Carr had hypertrophic arthritis or subdeltoid bursitis, both of which are forms of arthritis (R. p. 948). Mr. Hays said he had pain, stiffness, and swelling; that if he could find something to take away the pain, stiffness, and swelling, he would think he was cured (R. p. 855). Mr. Carr said the same thing (R. p. 906).

In other words, through the mouths of these witnesses of respondents is confirmation of the fact that representations addressed to rheumatic sufferers that Imdrin "stops the pain", "causes stiffness and swelling to disappear", is a representation of a cure. They had arthritis. They had pain, stiffness, and swelling. They were seeking just what respondents' advertisements promised, and thought if they could get what respondents' advertisements promised, they would be cured.

Fifth Proposed Finding:

There is no such disease simply known as arthritis, or any disease known as rheumatism. These are general terms, sometimes used interchangeably, and refer to many diseases, some of which the cause is known, and some of what the cause is unknown. Chronic forms of rheumatism or arthritis of unknown causes are rheumatoid arthritis, osteoarthritis and rheumatic fever. Then there are some forms of arthritis for which the causes are known. They are called specific infectious arthritis. Among these forms of arthritis are the arthritis of syphilis, the arthritis of gonorrhea, the arthritis associated with pneumonia and tubercular infection. There are forms of arthritis, such as gout, which are connected with disturbances of metabolism. Sometimes arthritis or rheumatism may be the result of a tumor, or malignant growth such as cancer. (Dr. Rosenberg, R. pp. 238-239; Dr. Barton, R. pp. 386-388, 400.) The terms "arthritis" and rheumatism" also include the conditions known as fibrositis, bursitis, neuralgia, neuritis, and sciatica, which are themselves conditions rather than specific diseases, each of which may result from any one of a number of causes. (Dr. Rosenberg, R. pp. 388-390; Dr. Wolpaw, R. p. 479.)

42 All of the various kinds of rheumatism and arthritis are characterized by different pathological changes, that is, changes in a person's body, or organs and tissues. (Dr. Rosenberg, R. p. 247; Dr. Barton, R. p. 390; Dr. Wolpaw, R. pp. 479-480.) Among the pathological changes caused by rheumatoid arthritis, are destructive changes in the joints themselves and widespread inflammatory changes in the tissues of the body, including the synovial membrane and connective tissues. The swelling in the joints in rheumatoid arthritis is due to this inflammatory thickening of the synovial membrane and connection tissue. The

synovial membrane is the membrane that lines a joint space. (Dr. Weisburg, R. p. 618, 626, 627; Dr. Arnold Black, R. p. 658, both on cross-examination.)

There is no drug, or combination of drugs, that can restore to normal the pathological changes that occur in rheumatoid arthritis (Dr. Rosenberg, R. pp. 329, 330; Dr. Barton, R. pp. 425, 426; Dr. Wolpaw, R. pp. 512, 513), or in osteoarthritis (Dr. Rosenberg, R. p. 327; Dr. Barton, R. p. 424; Dr. Wolpaw, R. p. 511), or in sciatica (Dr. Rosenberg, R. p. 314; Dr. Barton, R. p. 403; Dr. Wolpaw, R. p. 495), or in any kind of neuritis, except that caused by vitamin deficiency, for which respondents' preparation is admittedly not a remedy (Dr. Graef, R. pp. 206, 208; Dr. Rosenberg, R. p. 319; Dr. Wolpaw, R. p. 499), or in gout (Dr. Rosenberg, R. p. 325; Dr. Barton, R. p. 419; Dr. Wolpaw, R. p. 508), or in bursitis (Dr. Wolpaw, R. p. 505), or in infectious arthritis (Dr. Rosenberg, R. p. 332; Dr. Wolpaw, R. p. 515).

The various kinds of arthritis and rheumatism are characterized by different progress and development. (Dr. Rosenberg, R. p. 247; Dr. Barton, R. p. 390; Dr. Wolpaw, R. p. 480.) In many instances, the manifestations and symptoms are different. (Dr. Rosenberg, R. p. 247; Dr. Barton, R. p. 392; Dr. Wolpaw, R. p. 280.) The various kinds of arthritis and rheumatism require different treatment, which has to be greatly individualized for each patient, even among those suffering from the same kind. (Dr. Rosenberg, R. p. 247; Dr. Barton, R. p. 392; Dr. Wolpaw, R. p. 481.) Adequate, effective, or reliable treatment for any kind of arthritis or rheumatism depends on an adequate diagnosis, first as to whether the person has arthritis or rheumatism and, if so, the particular kind. (Dr. Rosenberg, R. p. 257; Dr. Barton, R. p. 394; Dr. Wolpaw, R. pp. 484, 485.) The prerequisites of an adequate diagnosis are first, a history of the patient including sex, occupation, family history, injuries and systemic diseases had in the past, if any, a detailed consideration of the course of the illness of which the patient is complaining,

the character of its onset, the speed and character of
43 its progress, and the response to previous treatment.

Second, a detailed physical examination of every part of the patient's anatomy. Third, laboratory tests of the blood, urine and other secretions, X-ray and sometimes an examination of the fluids in various joints. (Dr. Rosen-

berg, R. pp. 252-256; Dr. Barton, R. pp. 394-399; Dr. Wolpaw, R. pp. 484-489.) All of these matters would enter into the diagnosis. (Dr. Wolpaw, R. p. 489.)

There is no drug or combination of drugs that constitutes an adequate, effective or reliable treatment for the various kinds of arthritis and rheumatism. (Dr. Rosenberg, R. p. 250; Dr. Barton, R. p. 393; Dr. Wolpaw, R. p. 484; Dr. Black, R. pp. 647, 648.)

In arthritis conditions, where the cases are not in the advanced stage, there may occur periods of remission that may last for months. (Dr. Miller, R. pp. 1053, 1054.)

The consequences of delay in adequate treatment of arthritis and rheumatism, particularly the arthritis of specific known infections, may result in irreparable crippling. (Dr. Rosenberg, R. p. 257; Dr. Barton, R. p. 400; Dr. Wolpaw, R. p. 490.)

Reasons for Proposed Finding:

Specific citations to the record support every one of the above statements and there is no testimony to the contrary.

Sixth Proposed Finding:

Respondents' preparation, "Imdrin", is not an adequate, effective, or reliable treatement for, will not arrest the progress of, correct the underlying causes of, or cure any kind of arthritis or rheumatism, neuritis, sciatica, gout, neuralgia, fibrositis or bursitis.

Reasons for Proposed Finding:

In addition to the previous proposed finding, which is undisputed, this proposed finding is supported overwhelmingly by the direct testimony of Dr. Rosenberg, which on these points is summed up on pages 334-336 of the record; by the direct testimony of Dr. Barton, which on these points is summed up on pages 430-433 of the record; by the direct testimony of Dr. Wolpaw, which on these points is summed up on pages 518-520 of the record; by the direct testimony of Dr. Graef, which on these
44 points is summed up on pages 204-208 of the record.

All of these men were the best possible qualified experts in this particular field. Dr. Wolpaw had actually had experience in treating patients with Imdrin, who were suffering from arthritis conditions. The fact that Dr. Barton, Dr. Rosenberg and Dr. Graef had had no ex-

perience with Imdrin, itself, does not nullify the weight attached to their testimony, as qualified physicians based on their general knowledge of medicine. (*Irwin et al.* v. *F.T.C.*, 142 F. (2nd) 316; *John J. Fulton* v. *F.T.C.*, 130 F. (2nd) 85; *Justin Haynes & Co.* v. *F.T.C.*, 105 F. (2nd) 988; *Bristol Meyer* v. *F.T.C.*, 185 F. (2nd) 58.) Especially is this true in this particular case for the following reasons:

Dr. Shorr showed conclusively in his testimony that succinates are normally present in the body; that when added in amounts over and above the amount normally present in the body, the effects would be deleterious (R. p. 87); that there were no clinical conditions under which there were ever a lack of succinates in the body (R. p. 104); that his experiments were with sodium succinate, but the important thing was the succinic acid in the succinate, whether it be sodium succinate, calcium succinate, or ammonium succinate (R. pp. 109, 111); that succinates taken by mouth never get into the blood that circulates through the body (R. p. 118); that taken by mouth, succinates are converted completely to sugar by the liver (R. p. 114); that he has calculated the effect of the amount of succinate in the daily dosage of Imdrin, and it would result in .56 grams of sugar being added to the body when it passed through the liver (R. pp. 115, 116). There has never been any contention that the thiamine chloride or caffeine added anything of value to the preparation. So when Dr. Shorr's testimony eliminated any possibility of benefit from the calcium succinate in the preparation, all that is left so far as therapeutic effect, are the salicylates, manganese salicylate and aspirin. In fact respondents' expert, Dr. Weisburg, stated that unequivocably at the bottom of the 3rd page of his affidavit which is Commission Exhibit 39. All of respondents' experts in an attempt to show the value of Imdrin in rheumatic conditions, only talked about the value of the salicylates in the prep-
45 aration. The record shows that Dr. Barton and Dr. Rosenberg each have had wide experience in the use and the effect of salicylates in rheumatic conditions. (Dr. Rosenberg, R. pp. 341-344; Dr. Barton, R. pp. 452, 453.) Since the undisputed evidence shows that the salicylates are the only active ingredients it follows that Dr. Barton and Dr. Rosenberg were as well qualified to talk about the effects of Imdrin in rheumatic conditions as if they had extensive experience with Imdrin itself.

The testimony of the Commission experts in support of proposed finding No. 6 is not seriously disputed by the heterogenous collection of doctors, put on the stand by respondents. None of the doctors called by respondents had used Imdrin, nor do their qualifications or experience in the field of arthritis diseases begin to compare with the qualifications and experience of the experts who testified in support of the complaint.

Dr. Arnold Black, one of respondents' expert witnesses, stated on cross-examination that adequate treatment of an arthritic condition included extensive general management, not only medication, but also rest, diet, physiotherapy and orthopedic measures, where indicated; that it would take all of these measures to constitute adequate treatment (R. p. 648). He further stated that just merely dispensing salicylates could not be considered an adequate treatment for rheumatoid arthritis (R. p. 649).

Seventh Proposed Finding:

Through the use of the advertisements in evidence, respondents have represented directly and by implication, that their preparation Imdrin is an adequate, effective and reliable treatment for the symptoms and manifestations of all kinds of arthritis and rheumatism, neuritis, sciatica, gout, neuralgia, fibrositis and bursitis, and will afford complete, permanent relief from the aches, pains and discomforts thereof.

Reasons for Proposed Finding:

First let's consider again what respondents' represented to be the symptoms and manifestations of the various kinds of rheumatism and arthritis.

46 "Where Rheumatism Strikes And How To Detect It.

"Rheumatic and arthritic pain and inflammation strike any of the areas indicated on the above chart (see Arrows). But these diseases have many forms and symptoms. All forms cause pain, frequent swelling and possible loss of function of joints * * *." (Comm. Ex. 12, 15, 16, 17, 18, 19, and 20.)

Comm. Ex. 2, one of the radio advertisements, starts off:

"If the misery of rheumatic and arthritic pains have been driving you to distraction—if you are plagued day after day with tormenting aches, swelling and stiffness * * *." (Underscoring supplied.)

Comm. Ex. 4, another radio advertisement, carries out the same theme. We therefore have respondents' representing that pain, stiffness and swelling of the joints are the common symptoms of all forms of arthritis and rheumatism. We then have these same radio advertisements telling the sufferer that Imdrin "stops the pain", "stiffness and swelling disappear, often over night". (Comm. Ex. 2, 3 and 4.) The newspaper advertisements say that Imdrin "works internally toward amazing reduction of pain, heat, redness and swelling." (Comm. Ex. 12, 13, 14, 15, 16, 17, 19 and 20.) Comm. Ex. 37 says "Imdrin" is a product scientifically designed to aid in the relief of nagging aches, pains, stiffness, and swelling of arthritis and related illnesses * * *. It will be found that Imdrin gives prompt, efficacious and long-lasting relief from the symptoms of the arthritic state, when used as recommended."

Thus we have Comm. Ex. 37 saying in so many words that Imdrin is an adequate, reliable and effective treatment for the symptoms of arthritis. We also have the other advertisements saying that the common symptoms of all forms of rheumatism and arthritis are pain, stiffness and swelling and that Imdrin is an effective treatment for these symptoms.

47 Respondents have also, through the advertising in evidence, represented that Imdrin will afford complete and permanent relief from the aches, pains and discomforts of all forms of arthritis and rheumatism. In the phrase "stops the pain", "stop" means "to interrupt or prevent the continuance or occurrence of"; to "cause to cease" according to Webster's New International Dictionary, 2nd Edition,—not to reduce the pain or to lessen it, but to take it away altogether. If "stiffness, and swelling disappear", as the advertisement says, they are gone, not merely reduced or lessened.

If, for arthritis sufferers, the "aching joints and muscles are a thing of the past", as the advertisements say, they are permanently gone.

"Remember it is much better to continue taking Imdrin some time after all symptoms have disappeared. This will aid in preventing the recurrence of pains and stiffness." (Comm. Ex. 37 Underscoring supplied.)

If all symptoms have disappeared, that is complete relief and if the recurrence of pains and stiffness are prevented, that is permanent relief.

Eighth Proposed Finding:

Imdrin, however taken is not an adequate, effective or reliable treatment for the symptoms or manifestations of any kind of arthritis or rheumatism, including rheumatoid arthritis, osteo-arthritis, specific infectious arthritis, fibrositis, neuritis, sciatica, gout, neuralgia and bursitis. It will not afford any relief of pain or other symptoms in the more severe cases. In other cases the relief afforded will be limited to such degree of temporary and partial relief of pain and fever (if fever is present) as its salicylate content may afford in the individual case. Therefore Imdrin cannot be depended upon to completely or permanently relieve the pains or to have any effect on any other symptoms, except fever, which accompany arthritic or rheumatic conditions including rheumatoid arthritis, osteo-arthritis, specific infectious arthritis, fibrositis, neuritis, gout, sciatica, neuralgia or bursitis.

48 Reasons for Proposed Finding:

An analysis of all the evidence both pro and con on the 8th proposed finding seems proper. This consists of the testimony of Doctors Rosenberg, Graef, Barton, Wolpaw, Weisberg, Black, Mayer, Arkim, Robinson and Lockie, (which will be discussed in the order in which it was given) plus the testimony of 14 user witnesses.

Dr. Rosenberg:

Dr. Rosenberg stated unequivocally that Imdrin was not in his opinion, either taken as directed or in double the dosage, an adequate, effective or reliable treatment for the symptoms and manifestations of any kind of arthritis or rheumatism including gout, fibrositis, neuralgia, bursitis or sciatica (R. pp. 336, 337). He had discussed in detail the symptoms of sciatica and stated that the most common symptom was pain along the course of the sciatic nerve; pain in the back of the leg and various portions of the lower extremities (R. p. 315) and that at most Imdrin might afford temporary relief from some mild pain in the area of the sciatic nerve, whether taken as directed or in double the dosage; that it could not be relied upon to usually or ordinarily relieve the pains of sciatica completely (R. p. 316). Dr. Rosenberg stated that the predominant symptom of neuritis was pain in the region of the affected nerve, but other symptoms included numbness, weakness

of muscle groups which supplied those nerves, and sometimes even paralysis; that Imdrin taken as directed would have little effect upon the pain of neuritis, and that doubling the dosage would not increase the ability of the preparation to relieve the symptoms of neuritis (R. pp. 319, 320). Dr. Rosenberg stated that the predominant symptom of nearalgia was lightning bursts of pain; that when taken as directed or in double the dosage, Imdrin would have little if any effect upon the pain of neuralgia; that in any event it could not be depended upon to usually or ordinarily relieve the pain of neuralgia completely (R. pp. 320, 321). Dr. Rosenberg testified that the symptoms of fibrositis were aching and stiffness about joints in the various muscle groups; that the predominant symp-
49 tom was pain; that Imdrin taken as directed or in double the dosage would only give slight temporary relief to the minor pains of fibrositis (R. p. 322).

Dr. Rosenberg testified that the usual symptoms of bursitis were pain and swelling at the affected site; that Imdrin taken as directed or in double the dosage would have little if any effect on the pain of bursitis (R. pp. 322, 323). He further testified that in the early phases of gout, the symptoms were recurring attacks of pain and swelling in the joints; that Imdrin taken as directed or in double the dosage would have little or no effect on the pains of gout (R. pp. 325-326). Dr. Rosenberg testified that the usual symptoms of osteo-arthritis were pain and stiffness that is aggravated by use; that Imdrin taken as directed or in double the dosage would only give partial temporary relief from the pains of osteo-arthritis at the most; that Imdrin could not be depended upon to usually or ordinarily relieve the pains of osteo-arthritis completely. (R. pp. 327, 328.) Dr. Rosenberg testified that some of the symptoms of rheumatoid arthritis were stiffness, swelling and pain in the joints in addition to other symptoms that he described; that Imdrin taken as directed or in double the dosage would have little if any effect on the pains of rheumatoid arthritis; that in other cases there might be temporary partial relief; that Imdrin could in no event be relied upon to usually or ordinarily relieve the pains of rheumatoid arthritis completely. (R. pp. 328, 329, 330.) Dr. Rosenberg stated that the symptoms of infectious arthritis were dependent on the germ causing the arthritis; that the usual symptoms were pain, swelling of the joints, and various degrees of systemic symptoms; that Imdrin,

taken as directed or in double the dosage could have little if any effect on the pain in most cases of infectious arthritis; that in no event could Imdrin be depended upon to usually or ordinarily relieve the pains of infectious arthritis completely (R. pp. 330-333).

Thus, before giving his opinion that Imdrin was not an adequate, effective or reliable treatment for the symptoms of the various kinds of arthritis and rheumatism, Dr. Rosenberg had discussed in detail the symptoms of each of the various kinds of arthritis mentioned in proposed finding No. 8.

Dr. Wolpaw:

Dr. Ralph Wolpaw stated unequivocally that Imdrin either taken as directed or in double the dosage, was not in his opinion an adequate, effective or reliable treatment for the symptoms or manifestations of any kind of arthritis or rheumatism, including gout, fibrositis, neuralgia, bursitis, neuritis or sciatica (R. pp. 520, 521). Before making that statement, he, like Dr. Rosenberg, had discussed the various symptoms including the pain, and the limited effect of Imdrin on the pains of sciatica (R. pp. 493-496), neuritis (R. pp. 498-500), neuralgia (R. pp. 500, 501), fibrositis (R. pp. 502, 503), bursitis (R. pp. 503-506), gout (R. pp. 506-509), osteo-arthritis (R. pp. 509-511), rheumatoid arthritis (R. pp. 511-514), infectious arthritis (R. pp. 514-516).

Dr. Barton:

Dr. Barton also stated unequivocally that Imdrin, taken as directed or in double the dosage, in his opinion was not an adequate, effective or reliable treatment for the symptoms or manifestations of neuritis, fibrositis, neuralgia, sciatica, bursitis or gout (R. pp. 433, 434). Through oversight he was not asked whether it was an adequate, effective or reliable treatment for the symptoms of rheumatoid arthritis, osteo-arthritis or infectious arthritis. However he did state that pain was a cardinal symptom of all types of arthritis and rheumatism (R. p. 439). He discussed the symptoms of, and the limited effect of Imdrin on the pain of infectious arthritis and stated that the measures to be used against infectious arthritis would depend upon the infection causing it (R. pp. 387, 428-430). He had also

discussed the symptoms of, and the limited effect of Imdrin on the pains of rheumatoid arthritis (R. pp. 387, 391, 426, 427), neuritis (R. pp. 407-410), neuralgia (R. p. 410), fibrositis (R. pp. 411-415), bursitis (R. pp. 389, 415-419), and gout (R. pp. 391, 419, 421).

Each of these experts, Dr. Rosenberg, Dr. Wolpaw and Dr. Barton, emphasized over and over again throughout their testimony that the treatment of both the disease and the symptoms in every rheumatic condition had to be on an individual basis.

As against the testimony of the three experts with their outstanding qualifications, we have the testimony
51 of Dr. Weisberg, Dr. Arnold Black, Dr. Lawrence H. Mayer and Dr. Aaron Arkim, plus the testimony of the lay User Witnesses for what it is worth. None of these doctors had ever used Imdrin and they gave no opinion as to its effect on rheumatic conditions or the symptoms thereof. Their opinions related solely to the effect of salicylates in various dosages.

Upon close scrutiny, it will be seen that the testimony of none of these doctors, except that of Dr. Mayer varied materially from that of the experts who testified in support of the complaint.

Dr. Weisberg:

The position of respondents in this case is best illustrated by the following questions and answers of Dr. Weisberg, appearing on page 579 of the record:

"Q. In those conditions doctor, in which salicylate therapy is given and in which relief of pain and discomfort was obtained will you tell us what effect if any it would have on accompanying redness or swelling?

"A. Not infrequently of course pain is present without redness or swelling. In those instances in which all of those conditions are found simultaneously it happens not infrequently that when pain subsides there is diminution of redness and swelling.

"Q. Will you tell us what your experience has been in the administration of salicylate therapy when pain is subsided in reference to immobility of the part affected?

"A. It is obvious that when there is a decrease in the pain the joint, if it is the joint which is affected, becomes more mobile. There is less disinclination on the part of the patient to move that part."

In other words the sole contention of respondents seems to be that when the pains of arthritic conditions are
52 relieved by salicylates there is an accompanying relief of redness, swelling and stiffness. This admits that unless the pain is relieved, there will be no relief of swelling or stiffness.

At this point attention is again called to the fact that the testimony of Dr. Rosenberg, Dr. Barton and Dr. Wolpaw shows that pain is a cardinal symptom of all forms of rheumatism and arthritis; that in some of these conditions, stiffness is also a symptom; in some conditions swelling is a symptom accompanying the pain; and in some conditions, pain, swelling and stiffness, are all three symptoms; that these experts who testified in support of the complaint, have said that Imdrin is not an adequate, effective or reliable treatment for the symptoms of any kind of arthritis. Therefore, according to them, Imdrin could not be an adequate, effective or reliable treatment for pain, stiffness or swelling, where any one or all three of these are present as symptoms.

On cross-examination, Dr. Weisberg stated, R. p. 618:

"The Witness: As I recall my words, of course, these are not exact words but they contain the meaning, I claim salicylates do relieve the pain of arthritis, and then I added when pain is relieved not infrequently there is a diminution of the redness and swelling and increased mobility. I didn't state it was the salicylates that would produce that effect."

And on page 619, the following question was asked and answered by him as follows:

"Q. The pathological changes, that is, at least among the pathological changes that occur in muscles and connective tissue in rheumatoid arthritis is inflammatory changes, as I understand you to say.

"A. Yes, sir."

And on pages 626 and 627, the following questions and answers:

53 "Q. Now, doctor, what is the synovial membrane?

"A. That is the membrane which lines a joint space. It is the membrane which in effect creates the cavity which exists around a joint.

"Q. Now, in cases of rheumatoid arthritis isn't it true that much of the swelling is due to the inflammatory thick-

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ening of the synovial membrane and connective tissue we might add?

"A. Yes.

"Q. Now, doesn't that swelling persist as long as those membranes and connective tissue remain thickened?

"A. Yes.

"Q. And the thickening is due to the inflammatory process?

"A. Yes.

"Q. And the cause of the inflammatory process is unknown?

"A. Correct."

And on page 628, the following questions and answers:

"Q. By the way, while we are talking about the stiffness doctor, in rheumatoid arthritis you do get a certain stiffness and deterioration of the joint itself sometimes, do you not?

"A. That is right.

"Q. Ankylosis?

"A. Right.

"Q. It is not your contention that salicylates could affect that stiffness, is it?

"A. Once it has been established, no, sir.

54 "Q. Now, the kind of stiffness that you are talking about then that is affected by salicylates is the initial stiffness on the onset of the disease, is that correct?

"A. That is right.

"Q. And only that kind?

"A. Not that resulting from ankylosis."

The formula for Imdrin shows that each tablet contains acetylsalicylic acid (aspirin) 1.9 grains and manganese salicylate 1.5 grains or a total of 3.4 grains of salicylates. The directions show 2 tablets before each meal or 6 tablets per day. This is a total daily dosage of 20.4 grains of salicylates. (See paragraph 2 of the complaint which is admitted.)

Attention is directed to the following questions and answers of Dr. Weisberg on page 629:

"Q. Now, a person who has rheumatoid arthritis, we will say, and he comes in with an inflamed elbow joint, swelling, redness, immobility of that joint and has intense pain as a result thereof, what dose of salicylate, what range dose would you give him?

"A. In such a hypothetical case, and this is a guess on my part, of course, I would say a dose of anywhere from thirty to ninety or more grains a day.

"Q. You don't think then that a dosage of nineteen or twenty grains of salicylate a day would affect much relief of the pain in that condition?

"A. Anything is possible in medicine but I doubt that.

"Q. Now, doctor, there are cases in which the pain is so intense, with rheumatoid arthritis now, there are cases in which pain is so intense that salicylates practically have no effect, aren't there?

"A. Sure.

55 "Q. Those type of cases you would have to give a narcotic, is that correct?

"A. With some reluctance."

Thus respondents' own so-called expert, Dr. Weisberg, while claiming on direct examination that reduction of swelling and stiffness followed from the relief of pain of arthritic conditions,—admitted on cross-examination that he made no claim that salicylates would produce that effect. He admitted on cross-examination, that the joint swelling in rheumatoid arthritis was due to the inflammatory thickening of the lining membrane of the joint and the connective tissue; that the swelling would persist as long as the inflammation was there and that the cause of the inflammation was unknown. He admitted further that in a case of rheumatoid arthritis the stiffness caused by joint deterioration could not be affected by salicylates; that the amount of salicylates in the daily dosage of Imdrin when taken as directed would not affect much relief of pain of rheumatoid arthritis, and that there were cases in which no amount of salicylates would have any affect on the pain.

Dr. Weisberg further admitted on cross-examination, that he had never specialized in arthritis and rheumatism, had never been on the staff of any arthritis clinic at any hospital and had never published any scientific paper on the subject of arthritis or rheumatism (R. pp. 608-609).

Dr. Black:

Dr. Arnold Black, the second of respondents' medical witnesses, stated on direct examination on page 646 of the record as follows:

"Q. Doctor, in your dispensing salicylates for the re-

lief of the aches and pains and discomfort of rheumatism or arthritis, will you tell us whether or not there is any effect when pain is relieved on the accompanying reddening or swelling that may exist?

"A. Well, if you specify, for example, rheumatoid arthritis and if there is some relief from pain by the ad-
56 ministration of salicylates which there practically always is, there will usually be an associated reduction in the muscle spasm and there may be some relief of the inflammation.

"Q. And, Doctor, would you tell us what effect the salicylate therapy would have, just as you answered, regarding the mobility of the joint or muscle affected?

"A. Well, when there is relief of pain, there is reduction in muscle spasm, and there is increase in mobility except where an ankylosis has existed previously.

"Q. And, Doctor, will you tell us what you mean by ankylosis?

"A. An ankylosis joint is one that is fused in which there is absolutely no mobility. It is rigid."

Yet on cross-examination beginning on page 658 of the record he stated as follows:

"Q. Your approach to the treatment of pain in rheumatoid arthritis is on an individual basis with the patient?

"A. Yes.

"Q. You can not say, as I take it, that a certain dosage of salicylates will decrease the pain in any case of rheumatoid arthritis?

"A. That is correct.

"Q. So any preparation that contains a certain fixed dose and is advertised for the relief of arthritis, relief for the pains of arthritis, that would work in some cases, and in some cases it wouldn't work, isn't that about right, Doctor?

"A. That is correct."

And on page 667 the following testimony was given:

57 "Q. Now, those who received or who would receive, I believe you said that there was some classification in which Mr. Gettlemen drew that you said, I believe, that 20.4 grains of salicylates per day would produce some measure of relief, or what did you say about that?

"A. Well, he asked me if in the average case of fibrositis there might be some relief from about 20 grains

of salicylate a day and I believe I said that there would be some help from that amount of medication.

"Q. Now, if you can treat them as average cases, would 20 grains of salicylates per day furnish complete relief from the pains accompanying fibrositis, in an average case of fibrositis?"

The answer to the last question by Dr. Black is found on 669:

"Q. Doctor, do you remember the question?

"A. Yes, sir, I do. I would say that in the average case that that dosage would be a little low.

"Q. So that that dosage at least could not be depended upon to furnish complete relief of the pains accompanying the average case of fibrositis?

"A. Not complete relief, no."

At one place in his testimony Dr. Black stated on page 657 as follows:

"Q. Doctor, during the period of acute inflammation of the muscles and connective tissues causing the muscle spasm in rheumatoid arthritis, would motion of the affected joints aggravate the underlying inflammation?

"A. Yes, a constant motion would aggravate the situation.

58 "Q. And if salicylates cut down the pain, would not the patient be more likely to move the affected joint than if the pain had not been cut out?

"A. I think that there would be a little increase in motion if the pain were cut down, but there would also be a part of this that would be due to the increase in the muscle spasm because of the decrease in the pain."

And at another point in his testimony he stated on page 651:

"Q. You have seen cases, I suspect, where the pain was so intense with rheumatoid arthritis that no amount of salicylates would have any effect to speak of, have you not?

"A. Well, I can't agree a hundred per cent with that. I think that we give all of these patients salicylates. Some of them need some narcotics with it too. Sometimes the salicylates alone won't help, but I think the two together would potentiate the effects of each other.

"Q. What else would you do for that patient, Doctor?

"A. I would prescribe physiotherapy, perhaps in an attempt to straighten the joint out.

"Q. What would that consist of?

"A. Well, again, depending upon the acuteness of the case, it might consist merely of some hot packs, and some mild massage and a little bit of stretching on the part of the physiotherapist. It might also consist of some splinting at night and even intermittently during the day to prevent the joint from becoming more deformed.

"Q. What is the splinting for?

"A. Well, the splinting helps to rest the joint.

"Q. Does the joint in that condition need rest?

"A. Yes, it does.

59 "Q. What else would you do for him?

"A. Of course, it can't be splinted all the time. It has to be taken out at intervals and put through a range of motion. We may have to put traction on the joint. Sometimes cortisone or ACTH is used for these patients. Sometimes we give them gold. It is rather difficult to generalize without having a specific case in mind."

Thus Dr. Black seems to agree with the experts who testified in support of the complaint that treatment of pain in these conditions has to be on an individual basis; that he cannot say that a certain dosage of salicylates will decrease the pain in all cases; that he has seen cases that would require salicylates plus narcotics to have any appreciable effect on the pain; that in the average case of fibrositis, salicylates in the daily dosage contained in Imdrin would be a little low and certainly could not be depended upon to furnish complete relief of pain; that even if salicylates did cut down the pain during an acute attack of rheumatoid arthritis, thereby causing more mobility in the joint, a constant motion would aggravate the underlying inflammation; that what a joint needs in such case is rest, such as is afforded by splinting, rather than motion.

Dr. Arkim:

Another of respondents' medical witnesses, Dr. Aaron Arkim did not say anything of consequence to support respondents' theory of the case. On the contrary, he stated as follows on cross-examination on page 717:

"Q. And, doctor, I take it from what you said in cases other than rheumatic fever you give salicylates for what relief of the pain it may afford?

"A. Without any expectation of any specific effect. In

fact, I might add here that salicylates are not specific for any disease, whether it be acute rheumatic fever or any other. It is not a cure of any disease.

60 "Q. Take a case of rheumatoid arthritis, for instance, doctor, the temporary and in many cases partial relief of the pain from salicylates is that what you would expect and all you would expect?

"A. That is all I would expect in such cases."

Dr. Mayer:

Respondents' witness, Dr. Lawrence H. Mayer, stated on direct examination that a daily dosage of 20 grains of salicylates per day would relieve the pains and discomforts accompanying rheumatism and arthritis (R. p. 686). He stated this on direct examination without any qualification or differentiation in regard to the different kinds of rheumatism and arthritis.

On cross-examination on page 688 he stated as follows:

"Q. Now, there is only a certain amount of pain that salicylates will relieve too, isn't there, doctor?

"A. That is right.

"Q. I take it that you have seen cases of arthritis in which no amount of salicylates would do any good as a practical proposition, haven't you?

"A. Yes.

"Q. In those cases would you sometimes use narcotics as a temporary measure, I mean?

"A. I wrote an article that covered that pretty well, when I stated that the treatment for arthritis that we had a new treatment every week and we could keep it up for three thousand years, there are that many different remedies, directed at pain for arthritis.

"Q. Well, you don't always use salicylates then for the pain, is that correct?

"A. No, that is very true.

61 "Q. You use other things?

"A. That is right.

"Q. Now, could this be true, doctor: You have said that pain is subjective, with which we agree, of course. What is a severe pain to one person would in all probability or might be not a severe pain to another one, is that not correct?

"A. Yes.

"Q. And a dose of salicylate that might relieve pain

in one person might not relieve the pain in another person.

"A. Oh, yes, that is true—particularly among lawyers."

His description of the use of a certain formula, Aciform No. II, beginning on page 690 and ending on 696 is so far out of line with the experience of all other doctors testifying for both sides as to render it improbable, and to discredit his opinion evidence on the value of salicylates. He further contradicted himself in the following statements on page 706:

"Q. Did I understand you to say that the pain was the indication of the severity of the arthritis, the amount of pain was the indication of the severity of the arthritis?

"A. Yes.

"Q. Sir?

"A. Yes.

"Q. Don't you have many cases of severe arthritis where there is little or no pain?

"A. Yes."

Although time may prove his prophecy on pages 702 and 703 correct, it is so far out of line with current thinking of the best informed experts as to put this witness in 62 a class by himself. The idea that osteo-arthritis, just to take one example, is the result of infection, runs counter to the opinion of all other experts. According to them, it is a condition resulting from wear and tear of the joints, over-weight, age and bad posture, all of which contribute or may contribute to the condition.

Dr. Robinson:

This expert dealt with the causes of stiffness and swelling in the various forms of arthritis and the effect or lack of effect on those causes. It is axiomatic that if stiffness and swelling are due to certain causes, it is necessary to remove those causes to relieve these conditions. Dr. Robinson said that stiffness in osteo-arthritis is due to two factors, the stress and the strain on a joint and the vulnerability of that joint to the strees and strain (R. pp. 1086, 1087); that salicylates have no effect on either of these two factors (R. p. 1089); that stiffness in rheumatoid arthritis may be due to different causes, ankylosis, muscle atrophy, swelling or inflammation; that salicylates have no effect on any of these causes (R. p. 1090); that stiffness in fibrositis may be due to inflammation in certain cases and in other

cases to unknown causes; that salicylates do not affect stiffness due to inflammation; that stiffness due to unknown causes in fibrositis may be affected by salicylates to a variable degree, but not in a dependable fashion, where they alone could be considered an adequate treatment for stiffness (R. p. 1091); that stiffness may be present in gout, but when present is not affected by salicylates (R. pp. 1094, 1095).

Dr. Robinson further said that swelling is very unusual in osteo-arthritis; that when present salicylates had no effect upon it; (R. p. 1091, 1092) that swelling in rheumatoid arthritis is due to the underlying inflammatory process, on which salicylates will have no effect; (R. p. 1092, 1093) that swelling may be present in fibrositis; that when present it is due to the inflammatory changes which are not affected by salicylates; (R. p. 1093) that swelling may be present in gout; that when present salicylates will have no effect on it (R. p. 1093, 1094).

63 Dr. Lockie:

Dr. Lockie stated that salicylates would have no effect upon the primary cause of stiffness in osteo-arthritis; that if a person with a mild case of osteo-arthritis took salicylates, that person might be less conscious of the stiffness; (R. p. 1169) that there are various causes of stiffness in rheumatoid arthritis; (R. p. 1170) that it may be due to ankylosis, inflammation, muscle atrophy or swelling; that salicylates will have no effect on stiffness in rheumatoid arthritis due to ankylosis, muscle atrophy or swelling; that when due to inflammation in the early phase of rheumatoid arthritis, salicylates may make a person less conscious of the pain and discomfort and help relieve stiffness in that manner; (R. p. 1170, 1171, 1172, 1173) that salicylates will not affect the cause of stiffness in bursitis; (R. p. 1173) that salicylates will not affect the cause of stiffness in neuritis or sciatica which is a special form of neuritis; (R. p. 1173, 1174) that stiffness in gout may be due to deposits of urate in the joint and when due to that cause will not be affected by salicylates; (R. p. 1174, 1175) that when stiffness in gout is due to inflammation, some people get temporary relief from salicylates, but they are not nearly as effective for this as colchicine, which is a specific (R. p. 1175).

Dr. Lockie also testified that salicylates will not affect

the underlying inflammatory process that is the cause of swelling in rheumatoid arthritis; (R. p. 1177) that swelling is not usually present in osteo-arthritis, and when present will not be affected by salicylates; (R. p. 1176) that swelling is not usually present in bursitis and is not present in neuritis; except there may be miscrscopic swelling in inflammatory neuritis or inflammatory sciatica; that when present in these conditions it will not be affected by salicylates (R. p. 1177, 1178).

Summing up the testimony of the expert witnesses on the 8th proposed finding, it was agreed by all of them that salicylates will not affect the more severe pains of arthritic and rheumatic conditions, and that the relief of the lesser pains would be temporary and vary with the individual case. It was contended by Dr. Weisberg and Dr. Black that when the pains were relieved by salicylates, relief
64 of stiffness and swelling usually followed. They both however admitted that there were many causes of stiffness that would not be affected by salicylates even if the pains were relieved. Both said that the amount of salicylates in the daily dosage of Imdrin is too low to furnish much relief of pain. Therefore, even taking their testimony at its best, relief from any of the symptoms is unreliable. Doctors Lockie and Robinson dealt with stiffness and swelling as separate symptoms, and said that with few exceptions salicylates would have no effect. Doctors Rosenberg, Barton and Wolpaw had dealt with the symptoms as a whole and denied that salicylates would have any effect, except on the pain.

Respondents' User Witnesses.

There were 13 user witnesses who testified for respondents. It was stipulated that one additional user Robert S. Greenfield, if called would give the same testimony in regard to the history including his aches, pains and conditions, the time and manner of use of Imdrin and the description of his condition thereafter, as Dr. Edward B. Miller testified was related to him by this user (R. p. 1068, 1069). The 13 users of Imdrin who testified were Peter J. Maretta (R. p. 761-775), Mrs. Rhoda Lipsie (R. p. 775-789), Mrs. Ida Klaus (R. p. 789-805), Mrs. Ingeborg Larson (805-823), King Hays (844-855), Arthur Fremault (855-867), Louis Jacobs (879-902), E. H. Carr (902-906), Mrs. E. H. Carr (907-913), Mrs. Katherine Gott (914-

921), Bernard W. Vinissky (922-946), Mrs. Marjorie J. Marchena (987-1003), Mrs. Betty Raaberg (1003-1019).

In connection with the testimony of these lay witnesses attention is called to the holding of the Commission in the matter of Ward J. Miller, trading in Amber-Ita, reported in 19 F. T. C. Decisions, page 57. On page 72 in the Findings the following statement is made:

"Respondent introduced the testimony of 13 lay witnesses. Each testified that he or she had been diabetic and had been benefited by taking Amber-Ita. These patients were, in some instances, taking insulin or diet, or both, along with their Amber-Ita; in other instances no control of these patients was exercised; and in still others the alleged diabetic condition was founded on heresay; that is to say these patients said that some doctor had told them that they had diabetes. If they were taking either insulin or diet or both with their Amber-Ita, its therapeutic value or lack of it could not be determined as either of the former, or both, is proper treatment in diabetes and no one could tell which was responsible for the improvement of these patients, if there was any improvement. The testimony of these lay witnesses is of no probative value."

It is true that the situation differs in the instant case from that in the Amber-Ita case in that these lay witnesses were not allowed to state the disease from which they claimed to have suffered. However the fact remains that none of them had any complaints at the time they were examined by respondents' doctors for the purpose of testifying in this action; that there were no controls over any of them while they were taking Imdrin; that Mrs. Rhoda Lipsie (R. p. 827), Mrs. Ida Klaus (R. p. 829), Mrs. Ingeborg Larson (R. p. 830), Arthur Fremault (R. p. 839), E. H. Carr (R. p. 948) were diagnosed by Dr. Weisberg as having had hypertrophic arthritis and Mrs. Marchena (R. p. 1031), Mrs. Betty Raaberg (R. p. 1039) were diagnosed by Dr. Miller as having had osteo-arthritis, the references to the record being where the doctors' diagnosis of each of these persons appears. The record shows in a number of instances that hypertrophic arthritis, degenerative arthritis and osteo-arthritis are all different names for the same thing. If these lay witnesses had osteo-arthritis they must have had a mild case since none of them had any complaints at the time they were examined by respondents' doctors. Most of them had not gone to a

doctor for their complaints. Dr. Miller testified that in mild cases of osteo-arthritis remissions occurred that may last for months (R. p. 1054). Hence in line with the thinking in the Amber-Ita case no one could tell what was re-
66 sponsible for an improvement in the symptoms reported by these seven lay witnesses. It may have been a remission.

Again, Trial Examiner Lipscomb held that where the doctor's opinion was based largely upon the history of the patient as told to him when the patient was not seeking medical treatment, but was coming to the doctor preparatory to taking the witness stand, such opinion was not admissible in evidence (R. p. 954-955). Dr. Weisberg's diagnosis of Peter J. Maretta having had fibrositis (R. p. 840) and King Hays having had gout (R. p. 972) was based entirely on the history as detailed by the patients. Dr. Miller's diagnosis of Mrs. Marchena having had osteo-arthritis was based entirely on the history outside of his fluoroscopic finding of narrowing joint space in her shoulder, which he admitted might not show up upon proper X-ray examination (R. p. 1050, 1051). Furthermore, Dr. Miller's testimony did not quite show a diagnosis but an impression of Mrs. Marchena's previous condition (R. p. 1058) and in regard to Mrs. Betty Raaberg he said he could not give a clear answer because "I am unclear in my own mind". (R. p. 1064) Dr. Weisberg's original cross-examination, (R. p. 582-629) his eagerness to help respondents, as evidenced by going to suite occupied by respondents' counsel to examine the witnesses, his failure to even let some of these lay witnesses know he was a doctor, his cursory examination of several of them all detract from the weight to be given his testimony.

If these lay witnesses did not have the conditions or diseases for which respondents advertise the preparation, the fact that they may have had the pains described by them, took Imdrin, and those pains went away is of no value as a defense to this action. All in all, it is believed, as was said in Amber-Ita case, that "the testimony of these lay witnesses is of no probative value."

Ninth Proposed Finding:

Through the use of the advertising in evidence, respondents have represented directly and by implication that Imdrin is a remarkable, amazing, sensational new discovery of scientific research.

67 **Reason for Proposed Finding:**

See Comm. Ex. 2 where it is stated that "Imdrin contains a remarkable discovery"; Comm. Ex. 3 where it is stated "Imdrin is unlike anything you've ever known . . . contains an entirely new scientific discovery"; Comm. Ex. 4 "compounded with a remarkable new ingredient"; Comm. Ex. 5 "Imdrin contains a remarkable research discovery"; Comm. Ex. 6 "contains an entirely new scientific discovery". See also Comm. Ex. 20 and others which state "Amazing New Discovery for Rheumatism, Arthritis"

• • • • •

Contains Sensational New Research Discovery".

Tenth Proposed Finding:

The only active ingredients in Imdrin are manganese salicylate and acetylsalicylic acid (aspirin). The action of these drugs have been known for many years, and is not a new discovery of scientific research. Their limited effect upon the pains of arthritic conditions is neither remarkable, amazing or sensational.

Reasons for Proposed Finding:

The formula for respondents' preparation as set forth in paragraph 2 of the complaint is admitted in the answer. It is again set forth in the second proposed finding. There is no need to repeat it here. Dr. Shorr testified that the amount of succinate obtained from the daily dose of Imdrin would all be turned into sugar in the liver, resulting in .56 grams of sugar (R. p. 115, 116). (See Comm. Ex. 35 which is the bottle containing that amount of sugar for illustration). Dr. Shorr further stated that to obtain a sustained succinate effect in the average man, even if the succinate should get by the liver as such, it would require 345 times the amount of succinic acid in the daily recommended dose of Imdrin: (R. p. 124, 125) that the succinate effect if achieved would be deleterious rather than beneficial. (R. p. 125, 126)

Dr. Shorr was the first expert witness and since he testified there has been no further mention of any effect of the calcium succinate in Imdrin. All of the experts
68 who testified had the formula in front of them, were familiar with it and stated that the salicylates were the only effective ingredients. Dr. Weisberg, respondents' expert so agreed on the 3rd page of his affidavit which is

Comm. Ex. No. 39. Respondents' other experts only testified as to the efficacy of salicylates (aspirin and other salicylates) in the treatement of rheumatic symptoms) None of them claimed any more efficacy for Imdrin than for salicylates. The thiamine chloride and caffeine in the preparation are in too small quantities to be effective for anything (R. p. 206).

The use and effect of salicylates in the treatment of rheumatic pains has been well known for a long time, at least since the advent of aspirin in tablet form, which according to common knowledge has been many years ago. Dr. Weisberg stated that salicylates enjoy the reputation of being an excellent analgesic in rheumatism and arthritis. (R. p. 578, 579) If salicylates enjoy that reputation, their effect is not new, sensational, amazing or remarkable. Life itself may be called remarkable, amazing or sensational in one sense that those terms may be used, since the process is little understood, but the impression created by these words, particularly when coupled with the words "new discovery" in advertising Imdrin give the impression that here is something different; here is a cure-all for arthritic sufferers. That impression is enhanced by mention of the wonder-working drugs, sulfa and penicillin, in some of the advertising. (See Comm. Ex. 20 and others).

In the case of *Carlay Co., et al.* v. *F. T. C.*, 153 F. (2nd) 493, reference is made to other cases holding that the words "easy", "perfect", "amazing", "prime", "wonderful" and "excellent" are regarded in law as mere puffing or dealers talk upon which no charge of representation can be based. Investigation of the cases cited shows the following statement from *Kidder Oil Company* v. *F. T. C.*, 117 F. (2d) 892:

"Petitioner's representation that its product will enable a motor car to operate an 'amazing distance' without oil or that its product is a 'perfect' lubrication; evidently is some exaggeration. To what extent however, it is difficult to say. Such terms are largely a matter of personal opinion. What might be an 'amazing distance' to one per-
69 son might cause no surprise to another. So far as we know there is nothing 'perfect' in this world, but still it is a common term which undoubtedly means nothing more that that the product is good, or of high quality. We can conceive of situations where the use of such words

might be deceptive and even fraudulent. As used by petitioner, however, we are of the opinion that they are nothing more than a form of 'puffing' not calculated to deceive." (underscoring mine)

It is submitted that here, where such words are used to describe a preparation the effect of which is entirely dependent upon the salicylate content, drugs which have been on the market for many years, is such a case as the court had in mind in the underscored portion of the quotation. The situation in the Kidder Oil Company case was not similar to the instant case. There, respondents had a motor oil that the court found was of more benefit to a motor than other oils because of a new ingredient, graphite.

Eleventh Proposed Finding:

Through the use of the advertisements in evidence respondents have represented directly and by implication that by taking Imdrin those suffering from all kinds of arthritis and rheumatism, neuritis, sciatica, gout, neuralgia, fibrositis and bursitis will be enabled to resume their normal living and usual occupations.

Reasons for Proposed Finding:

Comm. Ex. 2 and 5 "Users of Imdrin report that they have resumed normal living. For them the aching joints and muscles are a thing of the past".

Comm. Ex. 4 and 7 "Imdrin which has helped so many folks to again regain restful sleep, to resume normal occupations and once again to lead rich active lives".

Comm. Ex. 13, 14, 15, 16, 17, 18, 19 and 20 "Resume a more normal active life".

Twelfth Proposed Finding:

Persons afflicted with these ailments so severely as to interfere with their normal habits of life or their ability to carry on their regular occupations will not be enabled to resume such habits or occupations by taking Imdrin.

Reasons for Proposed Finding:

All of the expert testimony on both sides supports this finding:

Dr. Rosenberg, beginning on page 316 of the Record discussed each one of these conditions and said that Imdrin

would only afford temporary relief of the mild pains of these various conditions; that there were many cases in which the pains were so severe that Imdrin given in double the prescribed dosage would have no effect on them; that Imdrin could not be depended upon to ordinarily relieve the pains of these various conditions completely.

Dr. Barton discussed each of these conditions beginning on page 404 of the record and said practically the same thing as Dr. Rosenberg.

Dr. Wolpaw also discussed each of these conditions beginning on page 493 of the record and said practically the same thing as Dr. Rosenberg and Dr. Barton.

The most Dr. Weisberg said was that Imdrin should provide a measure of relief, depending upon the individual circumstances. (R. p. 581, 582) On cross-examination he said that in rheumatoid arthritis, with an inflamed joint, swelling, redness, immobility of the joint and intense pain, he doubted that a dose of 19 to 20 grains of salicylate a day would effect much relief of the pain. (R. p. 629)

Dr. Black said on cross-examination that in the average case of fibrositis a dosage of 20 grains of salicylates a day would be a little low. (R. p. 669)

The record shows as stated before in these findings that the daily dose of salicylates in Imdrin when taken as directed is 20.4 grains.

Dr. Mayer said on cross-examination that he had seen cases of arthritis where no amount of salicylates would do any good. (R. p. 688)

Dr. Arkim made the same statement as Dr. Mayer on this point (R. p. 717) and further that in rheumatoid
71 arthritis the temporary and in many cases the partial relief of pain would be all that he would expect from salicylates. (R. p. 717)

It goes without saying, that those persons whose normal habits of life and ability to carry on their regular occupations are stopped by these various conditions are the ones having the more severe cases. The testimony is in accord that in these cases Imdrin would afford no relief as a practical matter.

Thirteenth Proposed Finding:

Through the advertising in evidence, respondents have represented directly and by implication that Imdrin will correct any disturbance of and will insure adequate function of the vital enzyme systems of the blood and bones.

Reasons for Proposed Finding:

In Comm. Ex. 37 respondents state:

"For aid in insuring adequate functioning of the vital enzyme systems (biochemical catalysts) of the blood and bones, manganese salicylate and calcium succinate have been scientifically combined with the other ingredients for maximum effect."

Fourteenth Proposed Finding:

Imdrin, however taken, will not correct disturbances of, nor insure adequate functioning of the enzyme systems of the blood and bones.

Reasons for Proposed Finding:

Dr. Shorr gave the only definition in the record of an enzyme and enzyme systems in connection with his explanation of the relation between enzymes and metabolism in the body. Beginning on page 79 of the record he said:

"A. We believe that faulty metabolism is connected with malfunctioning of enzyme systems, and in many instances we have been able to actually relate a specific faulty metabolism with specific derangements in
72 enzyme systems. This is a field which is still growing, so that we do not know the whole answer, all the answers, but we are progressively learning that enzymes are, in their relationships to metabolic processes, are of the highest importance in maintaining the body in health, and in the maintaining—

"Q. Now, Doctor, what is an enzyme?

"A. An enzyme is a constituent of living tissue which may often be separated from living tissue and still preserve, in its action, which catalizes or accelerates the rate of processes of living processes so that rates are determined, rated processes are accelerated to a degree which is far beyond the possibilities for that process to go on in the absence of this catalytic agent.

"Thus, two constituents might be in a test tube for centuries and not inter-react, or inter-react very slowly. But, by the intervention of an enzyme that reaction may be made explosive and so, in a living body, for example, many reactions are too slow, or so fast, that their speed is infinitely greater than could be expected if they were not helped by means of these catalytic agents. These catalytic agents are enzymes. They participate in the reaction, sort of like a bucket brigade taking energy from one molecule,

and transferring it to the other, and in so doing they assist these processes, usually remaining quite intact themselves, as they participate.

"Q. Now, Doctor, what is meant by the term enzyme system?

"A. An enzyme system would comprise an enzyme with some of its assistants, which are called co-enzymes, plus the foodstuff on which that enzyme operates, or series of foodstuffs on which that enzyme operates."

He had previously stated on page 78 of the record what metabolism is:

73 "It is a term that is used comprehensively to include all of those processes which take place in living organisms and which provide between the obtaining of foodstuffs, whatever they may be, whether they be plant or animal, the conversion of those foodstuffs into energy to support the vital processes by which living organisms survive, and it deals not only with intake, the utilization of the foodstuffs, the conversion of these foodstuffs into one variety or the other within the body, the release of energy from these foodstuffs, mediated by the ductless glands, by the enzyme systems and the waste products of this process, including the manner in which these waste products are dealt with by the organisms."

Dr. Shorr discussed the effect of salicylates on metabolism and the functioning of enzyme systems on pages 89-98 and stated on page 98 that the effect was deleterious. He next discussed the effect of succinates on metabolism and enzyme systems on pages 100-112 and stated on page 112 that he knew of no condition where it would be necessary or desirable to administer succinate to insure normal or adequate functioning on any enzyme system. He had previously stated on page 100 that the effect of succinate on the various enzyme systems was deleterious. He was then asked the following question on page 113 of the record:

"Q. Doctor, from your knowledge of tissue metabolism, would you say that combinations of succinate, as calcium succinate, and salicylate, as aspirin and manganese salicylate, will correct, restore to normal or maintain any enzyme system that is not functioning normally?"

His answer was:

"The Witness: Prefacing my answer by a statement that what I say is based on my opinion, that the combina-

tion of the salicylate and succinate ions represents no difference in terms of normal tissue metabolism than does each of these ions separately, I would say that the combination could not be expected to correct any enzymatic defects.

74 "By Mr. Callaway:

"Q. Or restore it to normal, or maintain it?

"A. Or restore it to normal or maintain it.

"Dr. Graef testified in part beginning on page 189 as follows:

"Q. Are pathological changes connected in any way with the functioning of enzyme systems?

"A. Yes, sir.

"Q. Could you explain that for us?

"A. The enzyme systems of the body, in so far as delicate balance of the internal chemical processes in the body which may be upset by any one of a number of injuries. Simple examples may make my point clearer.

The inhalation of an atmosphere poor in oxygen will upset the metabolism of the body, and in certain portions of the body an insufficiency of the oxygen will interfere with the enzymes which depend on oxygen for their normal role. Shutting off the blood supply to a part may do so. An infection, an injury due to a blow; at the point of injury, or where the infection sets up an abnormal pathological process, there you have a small chemical reaction. It may be larger, it may spread, in which the enzyme system is locally disturbed. As a part of the total disturbance of the total metabolism of the affected part.

"Q. Then is faulty metabolism connected with the functioning of enzyme system?

"A. Indeed. There are metabolic disturbances in which the basic fault appears to be a disturbance in the enzyme system, whether the enzyme is present in sufficient concentration or absent altogether, or blocked by a part of the abnormal process."

75 He also discussed separately the effect of succinates and salicylates on metabolism and enzyme and enzyme systems. After considering the formula and directions for use as set forth in the complaint, Dr. Graef was asked the following question on page 202:

"Now, Doctor, in your opinion, will Imdrin, taken as

directed, correct and restore to normal the vital enzyme systems in the blood and bones?"

His answer and other questions and answers in this connection shown on page 203 are as follows:

"A. It will not, in my opinion.

"Q. In your opinion, will Imdrin, taken as directed, correct and restore to normal the vital enzyme systems of the body?

"A. It will not, in my opinion."

"Q. Doctor, in your opinion, will Imdrin, taken as directed, insure normal and adequate functioning of the vital enzyme systems of the body, including those of the blood and bones?

"A. It will not."

This testimony of Dr. Shorr and Dr. Graef amply support this proposed finding. Respondent must have abandoned any defense of this charge, since none of their witnesses gave any testimony on the subject.

Fifteenth Proposed Finding:

The advertisements of respondents in evidence with respect to their preparation Imdrin has had the capacity and tendency to mislead and deceive and has misled and deceived a substantial portion of the purchasing public into the erroneous and mistaken belief that the representations were true and into the purchase of substantial quantities of Imdrin by reason of such erroneous and mistaken belief.

Reasons for Proposed Finding:

That respondents' advertising had the capacity and tendency to deceive cannot be doubted. It was false, as
76 has been shown. That is all that is necessary. *Charles of the Ritz* v. *F. T. C., supra,* and cases therein cited. However, the above finding goes further than that and says that a substantial portion of the purchasing public has been misled. Reasonable inferences drawn from facts founded on substantial evidence are adequate to support findings. *Excelsior Laboratory Inc.* v. *F. T. C.,* 171 F. (2nd) 484. In the majority opinion of the Commission attached to the Findings and Order in the matter of *American Chemical Paint Company,* Docket No. 5135, 45 F. T. C. Decisions, p. 9, Commissioner Davis gave a clear explanation as to this inference in the following statement.

"If a seller falsely advertises a product and thereafter sells a substantial amount of such product, it is obvious

that members of the purchasing public who read the advertisements and who purchased that product were misled or unfairly influenced by the false statements made by the seller in his advertising."

Commissioner Davis further stated that the actual deception was present in such cases it was unnecessary to incur public expense in proving it, since the inference to support that finding can be so readily drawn.

Conclusion:

The aforesaid acts and practices of respondents are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the meaning of the Federal Trade Commission Act.

This follows as a matter of course from what has gone before.

Proposed Order to Cease and Desist:

It Is Ordered that the respondents Rhodes Pharmacal Company, Inc., a corporation and its officers J. Sanford Rose and Jerome H. Rose, individually, and as officers of respondent Rhodes Pharmacal Company, Inc., and respondents' agents, representatives and employees, directly or through any corporate or other device in connection with the offering for sale, sale and distribution of respond-
77 ents' product designated as Imdrin, or any product of substantially similar composition or possessing substantially similar properties, do forthwith cease and desist from:

1. Disseminating or causing to be disseminated by means of the United States mails or by any means in commerce as "commerce" is defined in the Federal Trade Commission Act any advertisement which represents directly or by implication:

(a) That said preparation is an adequate effective or reliable treatment for any kind of arthritis or rheumatism, neuritis, sciatica, gout, neuralgia, fibrositis or bursitis;

(b) That said preparation will arrest the progress of or correct the underlying causes of or will cure any kind of arthritis or rheumatism, neuritis, sciatica, gout, neuralgia, fibrositis or bursitis;

(c) That said preparation will have any effect upon any of the symptoms or manifestations of arthritis or rheumatism, neuritis, sciatica, gout, neuralgia, fibrositis or bursitis; except pain and fever:

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(d) That the effect of said preparation on the fever which may accompany some of these conditions will be more than such temporary effect as may be afforded in the individual case;

(e) That said preparation will have any effect on the more severe pains of arthritis or rheumatism, neuritis, sciatica, gout, neuralgia, fibrositis or bursitis; that the relief of the lesser pains accompanying these conditions is more than such temporary relief as may be afforded in the individual case;

(f) That the effect of respondents' preparation is remarkable, amazing or sensational or that it is a new discovery or the result of a new discovery;

(g) That persons afflicted with arthritis or rheumatism, neuritis, sciatica, gout, neuralgia, fibrositis, or bursitis so severely as to interfere with their normal habits of life or their ability to carry on their regular occupations will be enabled to resume such habits or occupations by taking Imdrin.

78 (h) That Imdrin will correct any disturbances of or will insure adequate functioning of the enzyme systems of the blood or bones.

2. Disseminating or causing to be disseminated any advertisement by any means for the purpose of inducing or which is likely to induce directly or indirectly the purchase of said product in commerce as "commerce" is defined in the Federal Trade Commission Act, which advertisement contains any representations prohibited in paragraph one hereof.

Reasons for Proposed Order:

The complaint admits a certain amount of antipyretic effect follows the use of respondents' preparation. This was not an issue in the case. However such effect must be allowed for in the order. The remainder of the order is entirely supported by the findings.

Respondents may contend that (e) above is too stringent. There was no contention that Imdrin would have any effect upon any symptoms or manifestations except pain, swelling and stiffness. Respondents own experts only contended that swelling and stiffness would be relieved when the pain was relieved. Upon cross-examination respondents experts admitted that many kinds of stiffness and swelling due to arthritic conditions would not be relieved even when the pain was relieved by salicylates, and that

the relief of pain was an individual matter and not a dependable result. Therefore the evidence and proposed findings justify subparagraph (c) above. Since the evidence justifies such order, it ought to be made. Failure to make the order as strong as (c) above would in effect permit respondents to indirectly represent the preparation as a cure for arthritic and rheumatic conditions. Respondents preparation does have some effect on the pain in certain cases, and this limited effect is provided for in (e) above. If coupled with a promise of even limited relief from pain, respondents are allowed to represent any relief from stiffness and swelling that would be a representation of a cure, because, to the layman, arthritis means pain, stiffness and swelling. These three symptoms are represented as meaning arthritis by the respondents in their advertising in evidence.

Respondents may also contend that (e) above ought to be worded to allow them to advertise the preparation for the relief of pain without further qualification, on the 79 theory that the word "relief" in connection with the word "pain" means the removal, in whole or in part of the pain. That is the dictionary definition. However, the court has held

"• • • as to dictionaries, words mean what people understand them to mean and dictionaries are only one source; persons whose business carries them among the buyers of a product are certainly qualified sources of information as to the buyers' understanding of the words they hear and use."

(*Benton Announcement Company, Inc.* v. *Federal Trade Commission*, 130 F. (2d) 254.)

Dr. Rosenberg was, therefore, a qualified source of information as to what relief of pain, as used by respondents, means to persons suffering from arthritic condition. He said that it would mean complete relief from pain. Also, the same meaning was given by King Hayes and E. H. Carr, two of respondents' user witnesses, whose testimonies are shown in the record at pages 844-845 and 902-906, respectively.

Even under the dictionary definition the word "relief" in connection with the word "pain" may mean complete removal of pain to some people and partial removal of pain to others.

The evidence and the findings show that it will have no effect at all upon the severe pains of arthritic conditions. To both those who have severe pains and to those having lesser pains, who understand the word "relief" to mean complete relief of pain, such advertising would be deceptive. Where the evidence shows in detail, as it does in this case, how unreliable respondents' preparation is for the relief of pain, it is believed that for adequate protection of the public, the order should spell out in detail the results which may be expected from the use of the preparation.

Such an order qualifying the degree of relief to be expected is in line with other orders issued by the Commission.

80 In the matter of *Paul Case*, Docket No. 4813, 44 F. T. C. Decisions, page 205, the findings went into the degree of relief afforded by the preparation and the order prohibited respondent from representing that it would do more than temporarily relieve the minor pains. This case involved a salicylate preparation advertised for rheumatism and arthritis and the case was contested.

Similar orders qualifying the use of the phrase "relief of pain" have also been issued in other cases. See the order in *Seydel Chemical Company, et al.*, Docket No. 5693 and the order in *Frederick Godfrey*, Docket No. 5702.

Looking at it another way, suppose the order did not require respondents to qualify the type of relief from pain to be expected. There would be nothing to prevent them from continuing to advertise that Imdrin "stops the pain". Such advertising would be within the dictionary definition of "relief", and could not be said to be in violation of such order. Yet the evidence shows that Imdrin does not stop any but the minor pains. Spelling out in detail in the order the degree of relief from pain to be expected, will enable respondents to know just what is expected of them on compliance, and possibly avoid further litigation.

Respectfully submitted,

Joseph Callaway,
Counsel Supporting the Complaint.

November 15, 1951.

81 UNITED STATES OF AMERICA.

BEFORE FEDERAL TRADE COMMISSION.

• • (Caption—5691) • •

PROPOSED FINDINGS, CONCLUSIONS AND ORDER.

(Filed Federal Trade Commission Received Dec 3 1951 Secretary.)

It is proposed that the Trial Examiner make the following findings:

1. That the respondents caused to be disseminated in interstate commerce certain radio and newspaper advertising of their product "Imdrin," said advertisements having been heretofore received in evidence as Commission's exhibits.

Factual and Legal Basis for Finding:

Transcript of Proceedings, page 2.

Transcript of Proceedings, pages 6, 9, 11, 14, 15, 16, 17, 18, 19, 20, 22, 23, 25, 36, and 37.

2. That the advertisements so disseminated by respondents mean only that "Imdrin" will provide relief of pain of arthritis or rheumatism and do not mean that "Imdrin" will provide treatment and cure of arthritis and rheumatism.

Factual and Legal Basis for Finding:

82 While the complaint herein charges that the import of respondents' advertising is to represent to the public that "Imdrin" is a cure or an adequate and effective treatment for arthritis and rheumatism (Tr. 2), such allegations are denied in respondents' answer (Tr. 2) and are not proof of such meaning.

To determine the true meaning of respondents' advertisements the Trial Examiner has before him (1) the advertisements themselves, (2) the testimony of one Dr. Edward F. Rosenberg as to what he believed his patients would understand the ads to mean (Tr. 258 to 313, and 558 to 572), and (3) the testimony of Abraham M. Breiman, an investigator and specialist in consumer research (Tr. 720 to 756), who testified to the results of a survey he conducted in order to learn what real members of the

purchasing public would understand the "Imdrin" ads to mean.

It is recognized that courts have held that the Federal Trade Commission need not sample public opinion before it can determine the meaning of advertising, *Aronberg* v. *Federal Trade Commission*, 132 F. 2nd 165; but those same decisions say that the Commission must make such determination after consideration of all the evidence in the record, *Zenith Radio Corporation* v. *Federal Trade Commission*, 143 F. 2nd 29. In this case that evidence includes the results of the consumer survey conducted by Mr. Breiman, which is the only real factual evidence before the Examiner indicative of the reaction of real persons to the advertising in question.

83 The opinions expressed by Dr. Rosenberg were only guesses, since he could not remember even an approximate date (Tr. 560) or the name of a single patient with whom he had discussed the "Imdrin" ads in question (Tr. 561, 564 and 572), nor could he recall a single specific occasion of same. It is respectfully submitted that this doctor wholly failed to qualify himself as an expert on consumer reaction. He himself expressed doubt that he should be characterized as such (Tr. 564), and his cross-examination revealed a complete failure of basis or foundation upon which to predicate an opinion as to what someone else would understand an advertisement to mean. In addition to this lack of probability, respondents were deprived of all opportunity to test, try and evaluate any possible reliability of the doctor's rank guess and conjecture by his complete refusal (Tr. 572) and inability to divulge the sources of his information. This opposes every concept of opinion evidence.

On the other hand, respondents produced in evidence the results of a survey of 300 persons (Tr. 728), including 13 interviews obtained of customers in drug stores (Tr. 728), and the balance in factories, homes and retail establishments. These were interviews of factory workers, office workers, housewives, business men, some educated more so, some less so (Tr. 728). Only a small number of these persons were known to the sampler (Tr. 737). Most all of them were strangers. Each was shown representative samples of the advertising in question (Commission's Ex-

84 hibits 6, 8 and 13—Tr. 731) and, after having been allowed to read and study these ads, was asked suc-

cessively and in the alternative (Tr. 730, 743) whether the advertising promised him or her a relief from the pain of arthritis or rheumatism or a cure or effective treatment of those diseases. The results of the first or February part of the survey were, of 150 people interviewed 137 stated that these ads meant that "Imdrin" would provide relief of pain, and the balance of 13 said that the ads meant that "Imdrin" would provide treatment cure; that is 91.3 per cent of those consulted thought the ads meant or implied pain relief, while only 8.7 per cent thought that the ads meant that "Imdrin" would provide treatment or cure (Tr. 731). Similarly, of another 150 people interviewed in April, 1951, 136 or 90.7 per cent stated they understood the ads to mean that "Imdrin" would provide relief of pain of rheumatism and arthritis, as against 14 or 9.3 per cent who said that the ads meant treatment or cure (Tr. 732).

In the light of this specific testimony as to consumer understanding of the meaning of advertising, respondents believe that no amount of speculation or inference will suffice to show the contrary. That the courts are interested in knowing what the consuming public would testify an advertising representation would lead them to believe is evident from the opinion of Judge Major in *Allen B. Wrisley Co., et al.* v. *Federal Trade Commission*, 7 Cir. 113 F. 2nd 437, 440. In that case it was stipulated that if thirty persons, members of the consuming public, were called to testify, sixteen would say that they under-
85 stood "Olive Oil Soap" (so labeled) to mean "one the oil content of which is 100% olive oil." The Court said:

"In our judgment, such a stipulation can be given little, if any weight, and cannot be said to be substantial in view of the unanimous testimony to the contrary given by witnesses who appeared personally."

On the hearing of this case, counsel for respondents made this statement for the record (Tr. 755, 756):

"As indicated by the Trial Examiner when we were off the record, and I am in complete agreement with his statement in this regard, that there is no point in putting these records (of the survey) of Mr. Breiman in the record.

"I would, however, like to make this statement for the record, and that is that we are ready, by any means, to permit the government to have the names of these various

people who were asked the two questions, testified to by Mr. Breiman, and whose responses thereto were recorded here."

Respondents believe their survey was fair, thorough and revealing and provides the Trial Examiner with his only reliable evidence of consumer reaction.

3. That the quantitative and qualitative formula of "Imdrin" and of its active ingredients is as follows:

Acetylsalicylic acid	1.9 gr.
Manganese salicylate	1.5 gr.
Calcium succinate (anhydrous)	2.3 gr.
Caffeine	.16 gr.
Thiamine chloride	1 mg.

Factual and Legal Basis for Finding:

Complaint, page 2.

4. That since the causes of most rheumatism and arthritis are unknown, it is both unnecessary and impos-
86 sible to remove those causes in order to effect proper treatment. Such treatment is confined to the relief of the symptoms of rheumatism and arthritis.

Factual and Legal Basis for Finding:

It seems well agreed by all the eminent physicians who testified at the various hearings that there is no known cure for the common primary types of arthritis. Dr. Seymour Weisberg so testified (Tr. 580). He further testified (Tr. 619) "* * * it is not always possible" to correct the underlying causes of the pathological changes occurring in certain forms of rheumatism and arthritis. Further, Dr. Weisberg testified (Tr. 580) "It is not uncommon, as a matter of fact, to treat a condition without knowing the primary cause." He further testified that salicylate therapy for the alleviation of the pains of rheumatism and arthritis, whether or not it will remove the cause of such a disease, can be said to be an effective treatment or remedy for that disease.

Similarly, Dr. Arnold Black, testifying for respondents, said that when he gave or dispensed salicylates for rheumatism or arthritis he would call that a treatment (Tr. 645), and that "The approach to the treatment of a great many diseases these days is not an approach to the etiology because we do not know the etiology. It is frequently symptomatic" (Tr. 655).

Dr. Ralph Wolpaw, testifying for the Commission, said: "Any pain or ache will be classified as rheumatism in many cases" (Tr. 477); that osteo-arthritis is a normal
87 aging process (Tr. 527); he further stated (Tr. 529) that "patients coming in aren't too interested in causes, they are primarily interested in getting relief, so that we have to direct our efforts toward that."

Also, Dr. Evan M. Barton, for the Commission, testified that pain was the cardinal symptom in each and every form of rheumatism and arthritis (Tr. 353); that the alleviation of pain is important (Tr. 339); also that relief "is effective when the pain goes away" (Tr. 344).

It further appears from the record that with the decrease of pain and suffering will come increased mobility and subsidence of redness and swelling. Dr. Weisberg testified (Tr. 579) that "when pain subsides there is a diminution of redness and swelling"; that "it is obvious that when there is a decrease in the pain the joint, if it is the joint which is affected, becomes more mobile. There is less disinclination on the part of the patient to move that part" (Tr. 579); that "as a matter of fact, prolonged immobility in a particular position is apt to cause a chronic deformity of the particular joint" (Tr. 623); that "one ordinarily requests the patient to put the joint through the range of motion which does not elicit pain" (Tr. 624).

Dr. Wm. Dodd Robinson, for the Commission, admitted that salicylates could be considered, to a variable degree, an adequate treatment for stiffness of rheumatism and arthritis, the causes of which are unknown (Tr. 1091);
88 that salicylates will have an effect on the pains of gout (Tr. 1095); that "the use of salicylates under those circumstances may permit increased mobility due to relief of pain" (Tr. 1122); and that "in general mobility is certainly good" (Tr. 1122); that "motion is desirable to maintain muscle tone and to maintain nerve control, maintain muscle strength so that if and when the inflammatory processes subsides the functional condition of the joint will be preserved. These are additional theoretical reasons that apply in various types of arthritis * * *" (Tr. 1143, 1144).

Similarly, Dr. L. Maxwell Lockie testified that: "I feel that salicylates, through its action in the thymus, will make a person less conscious of the primary cause, and under those circumstances it may decrease the stiffness as a

symptom" (Tr. 1169); and that in mild cases of rheumatism and arthritis mobility is desirable (Tr. 1193).

Dr. Black testified that in "rheumatoid arthritis, and if there is some relief from pain by the administration of salicylates which there practically always is, there will usually be an associated reduction in the muscle spasm and there may be some relief of the inflammation" (Tr. 646); that "there is increase in mobility except where ankylosis has existed previously" (Tr. 646); that with respect to the removal of the cause in order to correct inflammatory pathological changes "you can't remove the cause because you don't know what it is, you don't
89 know what the cause of rheumatoid arthritis is"; however, that one can alleviate those inflammatory changes somewhat (Tr. 656).

It seems obvious, therefore, that Dr. Weisberg was correct when he testified that:

"Very frequently the doctor, particularly when he is confronted by a disease for which there is no known cure, is compelled to resort to what is known as symptomatic treatment. He offers medication which provides relief from the discomfort caused by the disorder and he hopes—fortunately most of the time he is right—that sooner or later the natural restorative processes will correct the underlying condition." (Tr. 634)

5. That nearly all physicians commonly prescribe and use salicylates as a treatment in the alleviation of the pains of rheumatism and arthritis. Salicylates will relieve those pains.

Factual and Legal Basis for Finding:

Since nearly every physician who testified at a hearing of this case stated that he commonly used and prescribed salicylates for the alleviation of the pain and suffering of rheumatism and arthritis, and that it was the commonly accepted treatment of all doctors in the field, it seems unnecessary here to repeat that testimony in detail.

Dr. Edward F. Rosenberg, for the Commission, stated that he prescribed salicylates (Tr. 241) during diagnosis (Tr. 549) and that they were the best possible relief of pain to the patient (Tr. 244) which he further testified that all the standard texts on rheumatism or rheumatic fever that are used mention the use of salicylates for
90 the relief of pain of rheumatism or arthritis (Tr. 261).

Dr. Barton, for the Commission, testified (Tr. 352) that he prescribes salicylates for the relief of pain of rheumatism and arthritis; that "it is an important thing to be relieved" (Tr. 339); that the use of narcotics are more dangerous than salicylates (Tr. 340).

Dr. Wolpaw stated (Tr. 532) that he prescribed salicylates for the relief of pain of rheumatism or arthritis.

On the part of respondents, Dr. Weisberg stated that in his treatment of those patients suffering from the various forms of rheumatism or arthritis, he prescribes and uses salicylates (Tr. 577); that through his experience in the various hospitals, and reading the literature, he is familiar with the general practice of physicians practicing internal medicine, in that behalf, and that they use salicylate therapy for the relief of pains and aches of rheumatism and arthritis. He testified:

"I believe I can state without hesitation that I have employed salicylates more widely than any other drugs, and it is my belief that all doctors practicing in the field would probably make the same statement." (Tr. 578); that when he prescribed or used salicylate therapy he would call it a treatment (Tr. 578); that salicylates enjoy the reputation of being an excellent analgesic and in his experience they deserve that reputation (Tr. 579).

Dr. Black testified that for most of the musculo-skeletal diseases he would say that the drugs most often used
91 by doctors are "salicylates in one form or another" (Tr. 644); that these are more universally and generally used and prescribed than any other medicine in the relief of pains and discomforts of rheumatism and arthritis (Tr. 645).

Dr. Laurence H. Mayers, for respondents, testified that "We always use salicylates" in the treatment of patients suffering from rheumatism and arthritis (Tr. 681); that he has no idea at all as to how or why or in what manner physiologically or therapeutically salicylates relieve pain (Tr. 687); Dr. Aaron Arkin, for respondents, likewise testified that he had prescribed salicylates "in patients with arthritis, especially in cases of acute rheumatic fever," and "because we know we have no other, no better form of therapy." (Tr. 711)

Dr. Robinson, the Commission's witness, likewise testified that he used salicylate therapy and prescribed salicylates frequently in a majority of the cases of rheumatism

and arthritis (Tr. 1109); that nearly all doctors use salicylate therapy in such conditions (Tr. 1118); and Dr. Lockie also stated that:

"I usually tell a patient that if medication is desirable for relief of symptoms that salicylates in my mind are by far the best for them to use. I feel that it centrally lessens the consciousness of pains around joints, of discomfort around the joints. It makes them able to do things which in a mild and moderate case they may not have been able to do as well"

and "that is desirable" (Tr. 1192).

92 6. The amount of salicylates present in "Imdrin" would provide relief from pain and suffering in the cases of the majority of all persons afflicted with rheumatism or arthritis.

Factual and Legal Basis for Finding:

Since certain witnesses for the Commission have seen fit to question the efficacy of the product "Imdrin" as a palliative in the relief of symptomatic pains of rheumatism and arthritis, suggesting that the dosage of these admittedly beneficial drugs is insufficient for the purposes indicated, respondents take this means of pointing out to the Trial Examiner the pertinent testimony on that point.

Dr. Weisberg testifying for respondents said, in answer to the question "In what doses do you prescribe salicylates for the relief of pain in arthritis and rheumatism?", "The smallest dose which produces the desired result." And when asked "What is your experience along that line?", he replied: "It can range from an occasional five grain dose up to sixty to ninety grains a day" (Tr. 628). This witness further testified with respect to the salicylate content in "Imdrin" that "Well in probability it would provide relief for a majority of patients, and I am considering all arthritic patients taken as a group when I say that" (Tr. 636, 637).

Dr. Black, in like manner, testified that in the majority of ambulant cases that suffer from the pains, aches and discomforts of rheumatism and arthritis "some individ-

93 uals need to take five grains of aspirin at irregular intervals, and I have given as much as eighty to one hundred and twenty grains of sodium salicylate a day" (Tr. 647); and with reference to a similar content of "Imdrin", Dr. Black testified that "I think that twenty grains of salicylates a day would be somewhat helpful"

(Tr. 664); also: "I would say that they obtain some help from that. I wouldn't say that it is completely relieved, but I would say that they would obtain some help from that" (Tr. 671).

Dr. Laurence Mayers who, the Trial Examiner will recall, had treated over 100,000 cases of rheumatism and arthritis, the second largest number of any physician in the country, and who was an intimate of Drs. Hench and Judd of the Mayo Foundation, having also attended their wives and families, testified that before the advent of salicylates in tablet form doctors commonly prescribed four hundred to six hundred grains of aspirin a day in liquid form (Tr. 685), but that it was now recognized as true that a massive dose of salicylates, ninety to one hundred grains, would not be any more effective in relieving pain than one of twenty-five to thirty-five grains (Tr. 688), since physicians "found out that there was only 25 to 35 grains that can be absorbed, * * * the rest of it passes out unchanged." (Tr. 686) That the administration of twenty grains of salicylates per day for the relief of pains and discomfort of rheumatism and arthritis is the most common dose, and that it will relieve the pains and discomfort accom-

94 panying those diseases. (Tr. 686)

7. That pain is completely subjective and is incapable of definition and classification as to degree of pain suffered.

Factual and Legal Basis for the Finding:

All of the physicians who testified in the hearings in this case were unanimous in their statements that pain is completely subjective. The only differences were in the language used by each to say so.

On cross-examination, Dr. Rosenberg, the Commission's witness, testified as follows (Tr. 241):

"Q. As a matter of fact, pain is subjective as you get it from the patient, is it not?

A. Yes, that is correct.

Q. And it is a matter of the judgment of the patient, also?

A. Yes, and of the physician, the physician's judgment of the patient's remarks.

Q. That is right, and the remarks come from the patient?

A. Yes, that is correct."

With respect to the degrees of pain, Dr. Rosenberg testified (Tr. 240):

"Q. Doctor, you have talked about varying degrees of pain. What degrees of pain are there—will you kindly tell us—in those suffering from the various types of rheumatism or arthritis?

A. Well, we have no specific answer to that question. The best we can do is to refer to them as mild, moderate, severe and so forth.

Q. Is there a standard nomenclature for the degrees
95 of pain in those conditions that you know of?

A. Oh, I wouldn't say so, not that I know of, no. It is a matter of judgment how one shall designate the severity of the pain. I would say it is a matter of the judgment of the patient or the physician."

Likewise, Dr. Barton, the Commission's witness, after attempting to describe some rare experimental machine for objectively measuring pain, was forced to admit (Tr. 345):

"Q. In the last analysis, your pain is one of a subjective nature that the patient tells you about, is it not?

A. It is very helpful to have a patient tell one."

Dr. Barton further testified that "Some people can bear pain better than others" (Tr. 348) and that there aren't any clear lines of demarcation between mild and moderate pain; that "one would have a base line in each case to draw a demarcation. It isn't a blanket term that you can apply to everybody" (Tr. 348).

On his part, Dr. Wolpaw, another Commission witness, testified (Tr. 534):

"Pain in an individual will vary. For example, you might have a headache and not pay any attention to it, and the same headache in me will be putting me in bed, * * * but, it is still a subjective thing, as you say; you are actually right."

Dr. Weisberg, testified on the subject of the pains of rheumatism and arthritis as follows (Tr. 579, and 580):

"Q. Doctor, do you know of any definite or accepted standard for measuring the subjective aspect of pain?

A. To the best of my knowledge there is no objective means for determining the severity of pain."

96 Again, respondents' witness, Dr. Black, testified (Tr. 647):

"Q. Doctor, when you interview or examine a patient that is suffering from rheumatism or arthritis, do you know of any definite standard whereby you can measure the pain that that patient is suffering?

A. No, I think pain is purely a subjective thing and it has to be evaluated from that standpoint."

And Dr. Mayers, for respondents, testified (Tr. 686 and 687):

"Q. Doctor, in treating rheumatism or arthritis the degree of pain is usually subjective, that is, what the patient tells you, is it not?

A. I didn't understand.

Q. The degree of pain that a patient suffers is subjective, is it not, doctor?

A. Yes.

Q. There is no standard method of measuring pain that any patient suffers?

A. No."

In view of this unanimity of viewpoint on the subject among the medical experts, it would seem that there is little doubt but that pain is a completely subjective thing and incapable of definite classification as to degree.

8. That most cases of rheumatism and arthritis are ambulatory and mild.

97 Factual and Legal Basis for the Finding:

Of the Commission's medical experts, Dr. Rosenberg testified (Tr. 238) that the majority of rheumatic or arthritic patients that come to Michael Reese Hospital and to Mt. Sinai Hospital, with which he is connected, are ambulant and that from his own knowledge the majority of patients in the United States that are suffering from rheumatism or arthritis are "certainly ambulant" (Tr. 240).

Dr. Black testified on this point (Tr. 647)

"Q. Will you tell us, Doctor, whether or not the majority of those suffering from rheumatism and arthritis are ambulatory patients as compared to those that are bedridden?

A. I would say that the majority are ambulants.

Q. By that is meant that they walk around, is that right?

A. Yes, of course."

Dr. Black further testified that the most common form of rheumatism and arthritis, in his experience, is fibrositis; the next most common form is osteoarthritis (Tr. 654); that fibrositis, if it is classified as a form of arthritis, would be the most common form of arthritis (Tr. 663) and hypertropic arthritis next most common (Tr. 663); that

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people suffering from these two categories probably do not ordinarily or normally seek or procure medical treatment (Tr. 663). When asked (Tr. 663):

"Q. Now, Doctor, from your experience, what would be the means by which people in that group who are
98 not seeking medical treatment would take for self-medication?"

he replied (Tr. 664):

"A. Well, they usually treat themselves with the ordinary home remedies consisting primarily of heat and aspirin.

Q. Would you include generally the salicylates?

A. Yes, I would."

Similarly, Dr. Mayers, for respondents, testified (Tr. 706):

"Q. Doctor, will you tell us whether or not you know if there are a number of people that suffer with the pains and discomforts of rheumatism and arthritis that never go and see (doctors) or have medical care, if you know?

A. Well, the doctors think a comparatively small percentage go to doctors because about the time the patient gets ready to go to the doctor the pain they have disappears."

Dr. Robinson, the Commission's witness, testified as follows from his experience (Tr. 1142):

"Q. Doctor, is it not a fact that in an overwhelmingly large number of cases of rheumatism and arthritis, these cases are for want of a better word, ambulatory or not too severe?

A. Are you speaking of—

Q. How would you characterize it? I think you know what I am groping for.

A. All patients in the rheumatic disease group?

Q. Most of them are ambulatory, are they not?

A. The majority of them are ambulatory.

Q. And not too severely affected?

99 A. It all depends on what you mean by severity, because there are certain forms that may be mild at times and may be very severe at other times. But certainly the larger portion of these patients are able to be up and around. Many of them do carry on their duties and household activities with a greater or less degree of discomfort."

Even Dr. Lockie, testifying for the Government on rebuttal, stated (Tr. 1195) that "now by far most of the people I see (afflicted with rheumatism or arthritis) are ambulatory" and that of the patients suffering from those diseases, he sees the worst of them; "I see the problems." Dr. Lockie further testified that only approximately 8% of those persons afflicted with rheumatism or arthritis fall into class 4, the totally incapacitated class under the attempted classification of the American Rheumatism Society; that 92% fell into the remaining classes (Tr. 1207). And Dr. Wolpaw likewise testified that only 10% of the seven and a half million persons estimated to be afflicted with rheumatism or arthritis could be classified as cripples (Tr. 516 and 526).

100 9. That the use of "Imdrin" as directed has relieved and will relieve the pains, suffering, inflammation, stiffness and redness of persons afflicted with rheumatism and arthritis and has enabled them to resume their normal living.

Factual and Legal Basis for Finding:

More impressive than any theory advanced by the Commission's medical witnesses, none of whom had ever used or prescribed "Imdrin", as to its efficacy in alleviating the pains and other symptoms of rheumatism and arthritis, is the testimony in the record of the actual experiences of fourteen live users of the product (Tr. 761 to 823, 844 to 867, 868 to 946 and 987 to 1021). Each of these disinterested persons testified enthusiastically to the excellent results he or she had experienced from his or her use of "Imdrin".

These sufferers from rheumatism and arthritis included Peter J. Maretta, Mrs. Rhoda Lipsie, Mrs. Ida Klaus, Mrs. Ingeborg Larsen, King Hayes, Arthur Fremault, Louis Jacobs, E. H. Carr, Olive Mae Carr, Katherine Gott, Bernard Vinissky, Mrs. Marjorie Johnson Marchena, Mrs. Betty Raaberg and Robert S. Greenfield.

Each was examined by a physician who diagnosed his or her ailment as some form of rheumatism or arthritis (Tr. 823 to 844), (Tr. 946 to 985) and (Tr. 1021 to 1070), or it was stipulated by counsel that such was the case (Tr. 871, 923 and 1068). It was stipulated that Louis Jacobs of Cleveland, Ohio who testified in this cause had been a patient of Dr. Wolpaw who had previously testified for the Commission, and that Dr. Wolpaw had diagnosed

Mr. Jacobs' case as gouty arthritis (Tr. 871); similarly, it was agreed by counsel that Bernard Vinissky of Chicago, Illinois had been a patient of Dr. Rosenberg, a Commission witness, and that Dr. Rosenberg had diagnosed
101 Mr. Vinissky's condition as gouty arthritis (Tr. 923).

Dr. Edward B. Miller of New York, appearing for respondents, testified that he had examined Mrs. Marjorie Johnson Marchena, Mrs. Betty Raaberg and Robert S. Greenfield (Tr. 1025). He found Mrs. Marchena to have a condition "which we call a degenerative arthritis" or "osteoarthritis" (Tr. 1031); that Mrs. Raaberg "represents the same disease" but "a little more advanced form" (Tr. 1039); that as to Mr. Greenfield, he had bursitis (Tr. 1045) and neuritis (Tr. 1047). Since counsel for the Commission has seen fit to question the adequacy of certain diagnoses made by respondents' witness Dr. Weisberg, as will hereinafter appear, to the extent of holding two hearings designed to adduce rebuttal evidence with respect thereto, and has wholly failed on such occasions to attack the adequacy of Dr. Miller's diagnoses, it is to be assumed that Counsel is either satisfied with those diagnoses or recognizes his inability to discredit Dr. Miller in that behalf.

The balance of the sufferers from rheumatism or arthritis who testified for respondents were first examined by Dr. Weisberg, who diagnosed the case of each. Dr. Weisberg testified that Peter Maretta had muscular rheumatism or fibrositis (Tr. 826); that Rhoda Lipsie had hypertrophic arthritis (Tr. 827); that Mrs. Ida Klaus had hypertrophic arthritis (Tr. 829); that Mrs. Ingeborg Larsen was afflicted with hypertrophic arthritis, similar to the preceding case (Tr. 830 and 831); that King Hayes presented a case of gout (Tr. 833); that he was satisfied that every one of those persons had some form of arthritis (Tr. 838); that Arthur Fremault suffered from hypertrophic arth-
102 ritis (Tr. 839); the doctor's diagnosis of the condition of E. H. Carr was that Mr. Carr had hypertrophic arthritis, subdeltoid bursitis or both (Tr. 948); that Olive Mae Carr "was suffering from fibrositis or muscular rheumatism" (Tr. 952); as to Katherine Gott, Dr. Weisberg testified "My diagnosis was arthritis, type undetermined" (Tr. 954). Dr. Weisberg testified that in each instance he made his diagnosis on the basis of the facts apparent in the case of the particular patient involved;

that he took into consideration not only the history of the case as related to him by the patient, but such definitely objective findings as crepitus, the presence of Heberden's nodes which are present only in arthritis (Tr. 841 and 842) and the like; that these could be found without x-ray (Tr. 841).

On rebuttal, Dr. Robinson, the Commission's witness, after describing his own practice in diagnosing the cases of patients presumed to be suffering from rheumatism or arthritis with a view to attempting treatment of those patients rather than as preparation for testifying in a lawsuit, was forced to admit that Dr. Weisberg, as an accredited diplomate in internal medicine was qualified to make adequate diagnoses of rheumatism and arthritis, that the diagnoses Dr. Weisberg made might be right, and that if they were correct, it wouldn't just be the result of an accident. When asked by counsel for respondents: (Tr. 1129)

"Q. Do I understand you to say that Dr. Weisberg might have been right (in his diagnoses) in some of these cases? Is that what you are saying, in effect?"

Doctor Robinson answered:

"A. It is entirely possible that he was right in some of these cases."

"Q. And that it wouldn't be just an accident if he were right?"

"A. Of course not."

103 Again, Dr. Robinson, after being reminded that Dr. Weisberg, like himself, was a diplomate in internal medicine, and asked whether an applicant for such recognition is not required to demonstrate to the Board evidence of his proficiency in diagnostic techniques and (Tr. 1132)

"Q. Do I understand you to suggest that one might become a Diplomate without certain recognized abilities in the art of diagnosis?" responded

"A. No. I don't want to indicate that."

Doctor Robinson further stated (Tr. 1132):

"A. I do not think he (Dr. Weisberg) is wrong in nine cases, obviously. However, I think it depends very much on what you mean by diagnosis, sir."

Doctor Robinson then sought to distinguish between what he called a "clinical impression" and a "diagnosis" and testified further as follows (Tr. 1134):

"Q. Am I correct in stating then that you called some-

thing you described an adequate diagnosis and something else an impression gained by a doctor? That is you defined one thing as an adequate diagnosis and another which you called a doctor's impression.

"A. A clinical impression.

"Q. Is it not a fact that the line of demarcation between various diagnoses and so-called impressions is a hazy one at best, a very nebulous one?

"A. Unfortunately there are fields of medicine where one cannot go much farther than what we call a clinical impression * * *"

"Q. Would you call what you have just described as an impression, a guess? Is that the same thing to your mind?

"A. No."

This impresses respondents as unwarranted hair-splitting. Moreover, Dr. Robinson, when asked if he ever made less than a complete diagnosis of a patient, replied (Tr. 1136 and 1137):

"Regarding the without going through the complete diagnostic procedure, there are occasional exceptions. 1104 For instance, where you have a single finding which may be pathognomic—I mean it occurs in that disease and no other disease—of course, if you find that and make a diagnosis without going through the detailed procedure—(presumably such would be considered adequate diagnosis)."

It should be remembered that Dr. Weisberg had testified to having found such characteristic evidence of arthritis as Heberden's nodes in various of the patients he examined, a condition which does not exist in connection with any other disease. Such would seem, therefore, to fulfill the requirement of Dr. Robinson's exception hereinabove stated. Further, Dr. Weisberg testified (Tr. 957 and 958):

"You mentioned that it was a brief examination. I'd like to point out that that doesn't necessarily make it inadequate, not by a great deal, and there were a number of instances when I mentioned quite emphatically that it was my belief that individuals had hypertrophic arthritis. In those cases I feel very strongly that further evidence, the sort adduced by x-rays, would add nothing to the diagnosis. The clinical evidence was so clear-cut that in my mind there would be no doubt whatsoever regarding the nature of the disorder and it is my very distinct impression that the neophyte in the practice of medicine would have been compelled to make a similar diagnosis."

With respect to the particular individuals examined by Dr. Weisberg, he testified that while x-rays, sedimentation rate and urinalysis would be additional evidence, none of these would be necessary to establish a diagnosis in those particular cases (Tr. 959).

It seems unnecessary here to detail the testimony of the various users of "Imdrin". Many of them had previously taken aspirin, Anacin or other drugs without effect, then took "Imdrin" and experienced relief from the pains of rheumatism or arthritis, reduction of swelling, stiffness and redness and were able to move about in their daily routines in a manner before that time impossible.

105 Louis Jacobs of Cleveland, Ohio, the former patient of Dr. Wolpaw, testified that he took "Imdrin" and further (Tr. 879):

"Q. Did it help you in any way?

"A. Certainly.

"Q. How?

"A. I had no pain and I could walk. I could go places. I came to Chicago, sit, and take the Imdrin away and I won't come to Chicago." Further (Tr. 880):

"A. I told him (Dr. Wolpaw) Imdrin helped me and that it is wonderful."

He testified that aspirin made him sick (Tr. 882).

E. H. Carr testified that he took aspirin before he tried Imdrin, but the aspirin didn't seem to help him (Tr. 903); however, "Imdrin" just relieved me of that excruciating pain. He testified (Tr. 904):

"A. I couldn't raise my arm from the side. My wife had to help me with my coat.

"Q. Was that before you took Imdrin?

"A. Before.

"Q. After you took Imdrin?

"A. Well, it constantly got better and better until I don't have any effect at all.

"Q. What effect did it have in the area of your left thumb on your left hand?

"A. It disappeared entirely."

On cross-examination by counsel for the Commission, Mr. Carr further stated (Tr. 906):

"Q. And you got relief from pain, swelling and stiffness?

"A. Oh, yes, very much so."

Olive Mae Carr testified that she had taken aspirin for the pains all over the left side of her body "from the
106 ear all the way down on this arm" (Tr. 908 and 909) with no results, but that after taking "Imdrin" the results were "just wonderful." She testified, in part, as follows (Tr. 909):

"Q. Did you have, before you took Imdrin, did you have full mobility, could you move your arm around and your shoulder?

"A. Yes.

"Q. You could?

"A. But it hurt?

"Q. It hurt?

"A. It did.

"Q. After you took Imdrin the pain was eliminated?

"A. It was wonderful.

"Q. Did that happen immediately or over a period of time?

"A. Well, the first week it started to lessen and lessen, and now I don't have it at all."

Mrs. Katherine Gott testified that "I took aspirin, anacin, and stuff like that, but they never did any good (for her pains of rheumatism or arthritis)" (Tr. 915). Regarding her use of "Imdrin" she testified (Tr. 916) "It has helped me wonderfully." She particularized:

"Before I started taking it my hands were swollen up and I couldn't even bend my fingers down like that. They'd be swollen so badly I couldn't make a fist out of my hand. * * * Now (after taking "Imdrin") I can bend my hands and fingers" and make a first (Tr. 916).

She further testified that "the pain has lessened a lot." (Tr. 916).

Bernard Vinissky testified that he had doctored at the Mayo Foundation for many years and had been a patient of Dr. Rosenberg, the Commission's witness; that he had been subjected to much salicylate therapy for his gouty arthritis. Mr. Vinissky was asked how he felt after changing from aspirin and taking "Imdrin". He responded (Tr. 939): "The particular pain that impelled me to buy it had disappeared." He further testified "I
107 felt better after taking Imdrin than taking aspirin and with taking a smaller number of Imdrin pills than I was required to take of aspirin." (Tr. 941).

Peter J. Maretta, a user, was similarly asked (Tr. 763):

"Q. Did you take anything for the pain?

"A. Imdrin."

Further, he related (Tr. 763):

"Well, I took three pills for the one day and it eased up my pain. Not only that but when I went to bed it made me sleep better at night and I kept on taking them until the pain eased up and when I finished mostly all the bottle I didn't have any more pain. I don't have any more pain. I don't ever have any now * * * (the pain) hasn't come back at all."

Mrs. Rhoda Lipsie testified that she was bothered with a pain in her left hand (Tr. 776); that she took "Imdrin" until she had finished two bottles, at the rate of four tablets a day (Tr. 777). She answered questions of respondent's counsel as follows (Tr. 777):

"Q. Will you tell us what effect, if any, it had upon the pain?

"Well, it left me. The pain left completely.

"Q. Will you tell us when the pain was completely eliminated?

"A. I ran out of them and I thought I would wait, say, about three or four weeks before I would get more and I noticed I didn't have any pain and so I didn't buy any more for awhile.

"Q. Did you buy some more later?

"A. Yes, I did but I didn't use them four a day. I only took two a day.

"Q. How long did the pain last after you bought your further supply?

"A. Probably,—well shall we say just a couple of months?

"Q. When, specifically, would you say that your pain was completely eliminated?

"A. Six months ago."

On cross-examination, Mrs. Lipsie was asked by counsel supporting the complaint (Tr. 784):

108 "Q. When did that stiffness in the end joints of the forefinger and the little finger come, when did they come?

"A. At the beginning, it started right away, but it let up. When I took the pills (Imdrin), then it stopped. I felt now I could bend my fingers where before I couldn't."

Similarly, Mrs. Ida Klaus testified (Tr. 793):

"A. I came home and I seemed to be getting worse, it was pain, pain, pain my leg got numb all the way down to my ankle, I couldn't walk and that is the way I was suffering and suffering, that is all, and I took shots and pills and got no better.

"Q. What was it that you took in November?

"A. Your pills.

"Q. Imdrin?

"A. Yes.

"Q. And how did the pills affect your pain?

"A. It took it away.

On cross-examination, Mrs. Klaus was asked by the attorney for the Commission (Tr. 802):

"Have you ever taken any aspirin for this condition of yours? and she answered:

"Oh, yes, when I had that awful pain I used to take it. I would take a tablet or two and it wouldn't help me." and "I took quite a few."

Mrs. Ingeborg Larsen testified (Tr. 809) that a friend gave her "Imdrin" and she tried it and it seemed to relieve the pain in her knees (Tr. 807). It is especially noteworthy that this witness, in her testimony, volunteered spontaneously that (Tr. 810):

"A. It gave me relief.

"Q. It gave you relief?

"A. Well, I don't expect a cure because all the doctors that I have been talking to say there is no cure."

109 King Hayes, another user, testified for respondents (Tr. 848):

"Q. Before you used Imdrin did you have pain in your feet?

"A. Before I used it?

"Q. Yes.

"A. Sure I would have pain in my feet.

"Q. What did it do with regard to the pain, if anything?

"A. It took the pain and swelling out.

"Q. Then you went back to work? (Tr. 849)

"A. Yes.

"Q. During this time (before taking Imdrin) you had been unable to work, is that right?

"A. Oh, sure."

Arthur Fremault testified for respondents that he had had pains in the lower back, the full lower back (Tr. 856); that after taking Imdrin, he had said (Tr. 858):

"'Its wonderful. You are advertising your medicine. It is wonderful. I have got no pain any more.' Yes, it is gone."

Marjorie Johnson Marchena, for respondents, said (Tr. 987): "I had muscular pains in my body. * * * In my shoulders, in my arms, hands and my lower limbs." She testified that neither a liquid medicine nor capsules prescribed by her physician provided any relief (Tr. 988). She further testified that about a week after she commenced taking "Imdrin", six a day, she noticed that her pains were diminished (Tr. 990); that she used six tablets a day for about three weeks "To the time that I really felt relief and found out the swelling from my limbs were disappearing. The swelling was in the feet and knees and also the hands (Tr. 991). She stated (Tr. 992) that "My pains were all gone. And the swelling; yes." She did not move from her basement apartment until 1950, but her pains
110 were relieved and her swelling reduced three weeks after she commenced taking "Imdrin" (Tr. 995) about March, 1949 (Tr. 993). She testified that she had previously taken Dolcin and Anacin without effect; that she was an ordained Methodist minister (Tr. 1003).

Mrs. Betty Raaberg testified that "I couldn't go down the stairs and bend the knee here" * * * "I had such terrible pains. (Tr. 1005); that "While I lie in my bed before I took the Imdrin, I couldn't have any blankets to touch my knee (Tr. 1006) but that "Then before supper I took two ("Imdrin") again, and that was the first night for a long time I could have the blankets—" (Tr. 1006). She said that she used the blanket without pain "even the first night." She was then asked:

"Q. How long after that first day that you used Imdrin were you able to get downstairs where you previously were unable to?" and she answered

"A. I would say two days."

She testified further that she had tried aspirin. "They don't help me" (Tr. 1008)

As to Robert S. Greenfield, the last user witness scheduled to testify in the New York hearings, it was stipulated by counsel that if called, Mr. Greenfield would testify stat-

ing the history which he gave to Dr. Miller who examined him and which Dr. Miller had previously testified to in these hearings, including Mr. Greenfield's aches and pains and conditions, the time and manner and use of "Imdrin" and the description of his condition thereafter (Tr. 1068). Regarding the testimony so incorporated in the record, Dr. Miller had testified that Mr. Greenfield had a pain in his left knee in 1947; that he couldn't go to the movies, drive his car or sit anywhere for any length of time; that a year and a half after the onset of the pain, he took Imdrin as directed and in 48 hours had relief, slept 111 through the night after taking the medication for two days, and that his relief was complete after he had taken 100 tablets (Tr. 1040, 1041 and 1042); that three to-four months ago, he developed left shoulder pain which a physician diagnosed as bursitis; that two months later he started Imdrin and after a few days of taking the drug, he was much improved (Tr. 1043). Dr. Miller's diagnoses of bursitis and neuritis have already been mentioned on page 21 of these proposed findings.

In the light of these dramatic manifestations of the effects of "Imdrin" upon the pain, suffering, stiffness, swelling and other symptoms of numerous persons afflicted with various forms of rheumatism and arthritis, it seems reasonable to conclude that the product will do that for which it is held out to the public, a meritorious and different product designed and represented as capable of producing symptomatic relief for sufferers of diseases most distressing to mankind. It is requested that an order herein be framed accordingly.

Respectfully submitted,
Frank E. Gettleman,
James Goding,
Arthur Gettleman,
Edward Brodkey,
Attorneys for Respondents.

Chicago, Illinois,
December 1, 1951.

112A UNITED STATES OF AMERICA

BEFORE FEDERAL TRADE COMMISSION.

* * (Caption—5691) * *

ORDER CLOSING PROCEEDINGS BEFORE HEARING EXAMINER.

(Received Jan. 4, 1952, Secretary.)

It Is Ordered that all proceedings herein before the hearing examiner be, and the same hereby are, closed as of this 4th day of January, 1952.

Abner E. Lipscomb,
Hearing Examiner.

January 4, 1952.

112B UNITED STATES OF AMERICA

BEFORE FEDERAL TRADE COMMISSION.

* * (Caption—5691) * *

RULINGS ON PROPOSED FINDINGS AS TO THE FACTS AND CONCLUSIONS.

(Received Jan. 11, 1952, Secretary.)

Proposed Findings and Conclusions of Counsel in Support of the Complaint:

First:	Adopted.
Second:	Adopted.
Third:	Adopted in substance.
Fourth:	Adopted in substance.
Fifth:	Adopted in substance.
Sixth:	Adopted in substance.
Seventh:	Adopted in substance.
Eighth:	Adopted in substance.
Ninth:	Adopted in substance.
Tenth:	Adopted in substance.
Eleventh:	Adopted in substance.
Twelfth:	Adopted in substance.
Thirteenth:	Adopted in substance.
Fourteenth:	Adopted in substance.
Fifteenth:	Adopted in substance.
Conclusion:	Adopted in substance.

Proposed Findings and Conclusion of Counsel for the Respondents:

1. Adopted in substance.
2. Rejected as contrary to the implications inherent in respondents' advertisements.
3. Adopted in substance.

113 4. Adopted in part and rejected in part as contrary to the greater weight of the evidence.

5. Adopted in substance.
6. Rejected as contrary to the greater weight of the evidence.
7. Rejected as immaterial in part and contrary in part to the greater weight of the evidence.
8. Rejected as indeterminable and immaterial to the issues herein.
9. Rejected as contrary to the greater weight of the evidence.

Conclusion contained in the last paragraph on page 31 of respondents' proposed findings:

Rejected as contrary to the greater weight of the evidence.

Abner E. Lipscomb,
Hearing Examiner.

January 11, 1952.

114 UNITED STATES OF AMERICA

BEFORE FEDERAL TRADE COMMISSION.

• • (Caption—5691) • •

INITIAL DECISION.

By Abner E. Lipscomb, Hearing Examiner.

(Received Jan. 11, 1952, Secretary.)

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on August 17, 1949, issued and subsequently served its complaint in this proceeding upon respondents Rhodes Pharmacal Company, Inc., a corporation, and J. Sanford Rose and Jerome H. Rose, individually and as officers of said corporation, charging them with the use of unfair and deceptive acts

and practices in commerce in violation of the provisions of said Act. After the issuance of said complaint and the filing of respondents' answer thereto, hearings were held at which testimony and other evidence in support of and in opposition to the allegations of said complaint were introduced before the above-named hearing examiner theretofore duly designated by the Commission, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final consideration by said hearing examiner on the complaint, the answer thereto, testimony and other evidence, proposed findings as to the facts and conclusions presented by counsel, oral argument not having been requested; and said hearing examiner, having duly considered the record herein, finds that this proceeding is in the interest of the public and makes the following findings as to the facts, conclusion drawn therefrom, and order:

Findings as to the Facts.

Paragraph One: Respondent Rhodes Pharmacal Company, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio, with its principal office and place of business located at 1814 East 40th Street, Cleveland, Ohio.

115 Respondents J. Sanford Rose and Jerome H. Rose, individuals, are now and at all times mentioned herein have been, respectively, the president, and the vice president and treasurer, of said corporate respondent, Rhodes Pharmacal Company, Inc., with their offices located at the principal place of business thereof, and are now, and at all times mentioned herein have been, in control of the management, policies, and operation of the said corporate respondent, including the acts, practices and methods herein found.

Paragraph Two: The respondents are now, and for several years last past have been, engaged in the manufacture, sale and distribution in commerce, among and between the various states of the United States and in the District of Columbia, of a certain medicinal preparation designated "Imdrin", which is a "drug" within the meaning of the Federal Trade Commission Act, and for which the formula and directions for use are as follows:

Formula:

Each tablet contains:

Acetylsalicylic acid	1.9 grains
Manganese salicylate	1.5 grains
Calcium succinate (anhydrous)	2.3 grains
Caffeine	.16 grains
Thiamine chloride	1 mg.

Directions:

Two tablets before each meal with water.

Respondents cause the said product, when sold, to be transported from their place of business in the State of Ohio to purchasers thereof located in other states of the United States and in the District of Columbia. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in the said product in commerce between and among the various states of the United States and in the District of Columbia. Respondents' volume of business in such commerce is substantial, sales for the last quarter of 1948 being in excess of $250,000.00.

Paragraph Three: In the course and conduct of their business, respondents, subsequent to March 21, 1938, have disseminated and caused the dissemination, by the United States mails and by various means in commerce, as "commerce" is defined in the Federal Trade Commission 116 Act, of certain advertisements of the drug preparation "Imdrin", for the purpose of inducing, and which were likely to induce, its purchase. Among such advertisements were radio broadcasts disseminated subsequent to September 1, 1948, by various broadcasting stations, and advertisements published subsequent to September 1, 1948, in various newspapers circulated throughout the United States. Typical of such advertisements are the following:

"Amazing New Discovery For Rheumatism, Arthritis
No Faster Arthritic Pain Relief Known
Safe . . . Hospital Tested
Stops Swelling . Uncorks Joints . Contains
Sensational New Research Discovery

Picturization of
hand containing
tablet

New, Safe, Scientific Tablet
Not a Narcotic . . . Not Habit Forming . . .

At Last The Story Can Be Told! Science has turned its attention to relieving the agonizing pains of rheumatism and arthritis. The result of extensive research is the remarkable preparation Imdrin. Longtime sufferers from rheumatism, arthritis, neuritis and gout may find Imdrin gives glorious relief amazingly fast. Contains no dope or harmful drugs. Ask for Imdrin at drug stores.

Picturization of
scientist examining
test tubes

Developed after 3 Years of Extensive Tests in Hospital Clinics

Imdrin has been a closely guarded experimental secret before release for public use. Yes, medical men, after three years of extensive hospital tests, have proved conclusively that Imdrin works internally toward amazing reduction of pain, heat, redness, and swelling in the joints. Every victim of rheumatism, arthritis, neuritis, sciatica, gout, neuralgia, etc., should investigate this new development of modern medicine. Ask for Imdrin at drug stores.

117

Relieves Pain and Suffering After 20 Years of Torture!

•Picturization of man
in wheel-chair

'I call Imdrin a miracle and you can understand why when I tell you that the pain which had tortured and crippled me was gone after I had taken Imdrin. Now, for the first time in years, I can move about without pain and enjoy life once again. Surely the thousands of unfortunates like me should be happy to learn about the blessed, fast-acting Imdrin.'

A. C., Chicago, Ill.

•Picturization of old
woman invalid

'I had arthritis and rheumatism so bad I could hardly get around. In fact, I went to several doctors who told me that my case was hopeless and that they could do nothing for me. Well, I had about given up hope when I saw your ad in the paper and bought a bottle of Imdrin. I really think it's a wonder. I feel better with every dose I take. It seems like a dream to be free of so much pain.' Mrs. A. R. Webb, 311 N. Bryan St., Amarillo, Texas.

*Picturization of woman apparently suffering

'Even though my daughter is a registered nurse she could not find anything to help her agonizing arthritic pains. She tried everything but nothing did her any good. Then she bought Imdrin and she has had miraculous results. I am going to tell all my friends about the wonderful relief from Imdrin. It really is an amazing remedy.'
Mrs. C. C., Kunkletown, Pa.

*Posed by professional models.

Picturization of anatomical chart with arrows showing location of joints and muscles

Where Rheumatism Strikes . . .
And How to Detect It!

Rheumatic and arthritic pain and inflammation strikes any of the indicated areas. (See chart above.) But these diseases have many forms and symptoms.

118 All forms of arthritis and rheumatism are accompanied by pain, very often swelling and loss of function of the joints. Hospital test patients receiving Imdrin were able to resume more happy active living once the pain subsided and their confidence grew. Imdrin reduced joint swelling and eased pain rapidly. Imdrin is your greatest hope. Imdrin may give you the same blessed results. Get Imdrin today!

How Imdrin Helps You!

If you have suffered the tortures of rheumatic or arthritic pains, swelling and stiffness . . . if you get up mornings dreading the suffering the day may hold, and do it day after day, month after month, year after year . . . listen! Imdrin may answer your problem of comfortable living. In case after case Imdrin has proved its potency. Imdrin is one of the fastest arthritic and rheumatic pain relievers known to medical science. Cases deemed almost hopeless . . . persons who suffered and waited and hoped for as long as twenty years were able to live happy comfortable lives once again. No other medicament for rheumatism and arthritis can make this amazing statement . . .

and back it up with proven hospital and clinical records. Amazing new Imdrin brings new hope of a better life for you . . . and it is as close to you right now as your nearest drug s[illegible]. Get Imdrin today. Use only as directed. If you don't agree that amazing new, scientific Imdrin is the greatest blessing you've ever discovered, return for your money back. Get Imdrin today—resume comfortable living tonight!

Today—Resume Confident, Pain-Free Living With Amazing New, Safe, and Scientific . . .

Imdrin contains no dope or harmful drugs . . . is not habit forming. Hospital tests prove it is one of the fastest pain relievers for arthritic and rheumatic sufferers known to medical science. Start using Imdrin today. Don't miss the chance to enjoy living once again."

(Picture and one additional testimonial omitted.)

Imdrin
No Faster Arthritic Pain Relief or money back

Picturization of bottle of Imdrin

Mail this convenient mail order coupon

Coupon

119 "Imdrin is a product scientifically designed to aid in the relief of nagging aches, pains, swelling, and stiffness accompanying arthritis and related illnesses, such as certain types of rheumatism, sciatica, bursitis, and neuritis. . . .

"For aid in insuring adequate functioning of the vital enzyme systems (biochemical catalysts) of the blood and bones, manganese salicylate and calcium succinate have been scientifically combined with the other ingredients for maximum effect. . . .

"Imdrin is not habit forming—it does not contain narcotics. It is a reliable scientific remedy tested by doctors in famous hospitals, and offered to bring symptomatic relief to sufferers from arthritis, fibrositis, and certain forms of rheumatism, sciatica, and neuritis. To back up its claims, the distributors of Imdrin stand ready to return your money if you do not get the relief you desire. All druggists have Imdrin. Ask for it Today."

Paragraph Four: In the first line of the first above-quoted advertisement, respondents represent the drug preparation "Imdrin" to be an "Amazing New Discovery For Rheumatism, Arthritis", which will "Stop Swelling. Uncork Joints". From the quoted statements considered separately, and from the quoted statements considered in the light of the entire advertisement, it may reasonably be inferred that the preparation "Imdrin" is a newly discovered drug or substance effective in the treatment of rheumatic and arthritic conditions. To represent that such preparation "stops swelling" and "uncorks joints" is to represent that it possesses therapeutic properties curative of such conditions. Furthermore, the picturization of the anatomical chart, accompanied by the statement, "Where Rheumatism Strikes And How To Detect It", logically warrants the inference that the drug preparation "Imdrin" is offered as a treatment for rheumatic and arthritic conditions.

Although the various advertisements carry such statements as "No faster arthritic pain relief known", "Relief of nagging aches, pains, swelling, and stiffness accompanying arthritic and related illnesses", "One of the fastest arthritis and rheumatic pain relievers known to medical science", and "It is a reliable, scientific remedy tested by doctors in famous hospitals, and offered to bring symptomatic relief to sufferers from arthritis, fibrositis, and certain forms of rheumatism, sciatica and neuritis", such
120 statements, and others similar thereto relating to the symptoms and manifestations of arthritic and rheumatic conditions, do not qualify or restrict respondents' other, broader representations, nor limit their advertisements to the representation that the drug preparation "Imdrin" is offered only as an analgesic and antipyretic. The offering of said product as a "scientific remedy" implies that its use may effect cures. As used by respondents in their advertisements, the word "remedy" is not sufficiently qualified by any accompanying statement to modify or limit this significance of "cure".

The representation that ", . . . Persons who suffered and waited and hoped for as long as twenty years were able to live happy, comfortable lives once again. No other medication for rheumatism and arthritis can make this amazing statement . . . and back it up with proven hospital and clinical records" clearly implies that such

statement may truthfully be made with regard to the drug preparation "Imdrin", and, accordingly, that said preparation is an effective medication for rheumatic and arthritic conditions.

It is found that through the above-quoted advertisements and others similar thereto, respondents have represented, directly and by implication, as follows:

1. That the drug preparation "Imdrin", when taken as directed, constitutes an adequate, effective and reliable treatment for, and will arrest the progress and correct the underlying causes of all forms of rheumatism and arthritis, including neuritis, sciatica, neuralgia, gout, fibrositis and bursitis, and that said preparation will cure all forms of such diseases or afflictions;

2. That the drug preparation "Imdrin", when taken as directed, constitutes an adequate, effective and reliable treatment for the symptoms and manifestations of all of the above-named diseases or afflictions, and will afford complete, permanent relief from the aches, pains and discomforts thereof;

3. That the drug preparation "Imdrin" is a remarkable, amazing, sensational, new discovery of scientific research;

4. That by taking the drug preparation "Imdrin" as directed, persons suffering from any or all of the above-named diseases or afflictions will be enabled to resume their normal habits of life and their regular occupations;

121 5. That the taking of the drug preparation "Imdrin" as directed will correct any disturbance of the vital enzyme systems of the blood and bones, and will insure adequate functioning thereof.

Paragraph Five: The term "arthritis" and "rheumatism" are general terms, sometimes used interchangeably, which refer to any of a number of diseases or pathological conditions including, among others, neuritis, sciatica, neuralgia, gout, fibrositis, bursitis, rheumatoid arthritis, osteoarthritis, rheumatic fever and infectious arthritis, all of which are characterized by one or more of such symptoms or manifestations as pain, stiffness, and inflammatory and destructive changes in the joints and tissues of the body.

The term "neuritis" means inflammation of a nerve, which may be attended by pain, paralysis and degeneration of the nerve substance. This condition is produced by many causes, such as localized infection, creating toxic

substances in the system; toxic acidity from the use of various drugs; deprivation of certain chemical substances or vitamins; metabolic disturbances connected with diabetes; and infection of a nerve by various germs, such as that which causes syphilis.

"Sciatica" is an ailment which is manifested by pain along the course of the sciatica nerve, and is one form of neuritis. It also results from various causes, such as pressure exerted on the nerve or its roots by a tumor or neoplasm or an over-growth of bone; irritation or inflammation of the sheath of the sciatica nerve; and many other causes.

The term "neuralgia" refers to a syndrome of pain, or violent spasms of pain, which occur along the course of various nerves.

"Gout" is a disease connected with a disturbance of the metabolic functions of the body, involving the absorption of uric acid, which may result in pathological changes in joints, bones, cartilages, and a number of internal organs, particularly the kidneys, which may be utterly destroyed thereby. In its early stages the predominant symptoms of gout are recurring attacks of pain and swelling in the joints. Gout may cause deposits of crytalline material, with surrounding inflammation in joints, resulting in the destruction of their function.

"Fibrositis" is a general term referring to an inflammation of the fibrous tissue of the body, arising from unknown causes, and manifested by symptoms of aching and stiffness about joints or in various muscle groups. It may result in sciatica.

The term "bursitis" refers to inflammation of a bursa, which is a sac, generally adjacent to a joint or a bony prominence of the body, containing fluid, the purpose 122 of which is to act as a shock-absorber to provide for free movement of bones and joints. There are many types of bursitis, arising from known as well as unknown causes, such as gouty, tubercular, and gonorrheal bursitis.

Rheumatoid arthritis is a chronic, progressive, destructive disease affecting joints and organs of the body, characterized by pain, swelling, stiffness and limitation of motion in joints, and deterioration of the patient's general health. This disease is accompanied by pathological changes in the joints, such as thickening of the lining membrane; production of excessive fluid in the bursa in some

instances, and absorption of fluid in others; atrophy of muscles, and sometimes destruction of portions of the bone ends, resulting in deformation of the joint. The cause of rheumatoid arthritis is unknown.

The term "osteoarthritis" refers to one of the chronic forms of joint diseases which has the pathological characteristic of a wearing away of cartilages and the production of excess bone at the margins of joints, which manifests itself as a painful stiffness, creaking of joints, and sometimes loss of motion. Osteoarthritis may result from externally-caused injury, or from unknown causes.

The term "infectious arthritis" refers to a form of arthritis caused by invasion of the joint by a germ.

Paragraph Six: The various pathological conditions generally referred to as "arthritis" and "rheumatism" progress and develop differently. Likewise, they require different treatment, which will vary not only between different types of such ailments, but between different individuals suffering from the same ailment, and between different stages in the progress thereof. An adequate, effective, or reliable treatment for any kind of "arthritis" or "rheumatism" must, therefore, be predicated upon individual diagnosis, in order to determine whether the patient has arthritis or rheumatism, the particular kind of such ailment present, and whether it arose from a known or an unknown cause. Such a diagnosis may require any or all of the following determinations:

1. History of the patient, including information as to age, sex, marital status, occupation, chronology of the present ailment; family history, such as age and cause of death of parents and relatives; any illnesses from which the patient may have suffered previously, particularly rheumatic fever, scarlet fever and streptococcus infections;
2. Detailed physical examination of every part of the patient's anatomy; and

123 3. Laboratory examination, such as blood count, serological test for syphilis, urinalysis, and certain other tests as they may seem useful in the individual case, such as X-ray and analysis of fluids in individual joints.

Paragraph Seven: An adequate, effective, or reliable treatment for any of the various types of ailments included in the general terms "arthritis" and "rheumatism" may involve application of various therapeutic measures, including diet; rest or change of occupation; various types of

physiotherapy, such as orthopedic or thermal procedures; surgery; and medication. Delay of needed treatment may result in irreparable crippling, especially in those forms of arthritis and rheumatism known to be caused by specific infections. There is no drug, or combination of drugs, regardless of how administered, which will constitute an adequate, effective, or reliable treatment for any of the various forms of arthritis or rheumatism, nor is there any drug or combination of drugs which can restore to normal the pathological changes which result from any arthritic or rheumatic ailment. It is possible, however, to restore to normal certain of such pathological changes which are due to vitamin deficiency, by administration in sufficient quantity of the appropriate vitamin.

Paragraph Eight: The thiamine chloride, which is a vitamin, contained in the drug preparation "Imdrin" is insufficient in amount to have any beneficial effect in the treatment of a patient suffering from neuritis due to thiamine deficiency. The calcium succinate content of such preparation has no significant therapeutic value in the treatment of arthritis or rheumatic conditions, nor does it affect the functioning of the enzyme system of the blood or bones, for the reason that, when administered orally, as specified in the directions for taking Imdrin, succinates are converted to sugar by the liver, and, as succinates, never reach the bloodstream. The caffeine content of Imdrin has no significant therapeutic value in the treatment of any form of arthritis or rheumatism. The only ingredients contained therein which possesses active analgesic properties are manganese salicylate and acetylsalicylic acid, the use and effect of which, as analgesics and antipyretics, have been known for many years. Acetylsalicylic acid has for many years been sold throughout the United States as an analgesic under the name "aspirin". Accordingly, the drug preparation "Imdrin" does not constitute a new discovery of scientific research.

The analgesic effect of these salicylates, in the amount contained in the drug preparation "Imdrin", upon the aches, pains and discomfort of arthritic or rheumatic conditions is limited and temporary. Accordingly, such drug preparation is not remarkable, amazing, or sensational.

124 Paragraph Nine: The drug preparation "Imdrin", however taken, will not constitute an adequate, effective, or reliable treatment for any arthritic or rheumatic

condition, including neuritis, sciatica, gout, neuralgia, fibrositis, and bursitis, nor will said preparation arrest the progress, correct the underlying causes, or effect a cure of any such conditions. The drug preparation "Imdrin", however taken, will not ameliorate the aches, pains and discomforts of any arthritic or rheumatic condition to any extent beyond the temporary and partial relief thereof afforded by its salicylate content as an analgesic and antipyretic. The drug preparation "Imdrin", however taken, will have no significant effect upon severe aches, pains and discomforts accompanying any arthritic or rheumatic condition, and will afford temporary and partial relief of only minor aches, pains and discomforts. With the exception of such temporary and partial relief, the drug preparation "Imdrin" cannot be depended upon to have any effect whatever upon the symptoms accompanying any arthritic or rheumatic condition, including neuritis, sciatica, gout, neuralgia, fibrositis, and bursitis. Persons forced by such ailments to discontinue their normal habits of life or their regular occupations will not be enabled, by taking the drug preparation "Imdrin", to resume such habits or occupations.

The drug preparation "Imdrin", however taken, will not correct disturbances nor insure adequate functioning of the enzyme system of the blood or bones.

Paragraph Ten: Respondents' representations concerning the drug preparation "Imdrin", as hereinbefore found, are false and misleading in material respects; have had the capacity and tendency to mislead and deceive, and have misled and deceived a substantial portion of the purchasing public into the erroneous and mistaken belief that such representations were true, and into the purchase of substantial quantities of said drug preparation as a result thereof; and constitute false advertisements within the intent and meaning of the Federal Trade Commission Act.

Conclusion.

The acts and practices of respondents, as herein found, are all to the prejudice and injury of the public, and constitute unfair and deceptive acts and practices in commerce within the meaning of the Federal Trade Commission Act.

Order.

It Is Ordered that the respondents Rhodes Pharmacal Company, Inc., a corporation, and J. Sanford Rose and Jerome H. Rose, individually and as officers of said corporation, directly or through any corporate or other
125 device, in connection with the offering for sale, sale and distribution of the drug preparation "Imdrin", or any product of substantially similar composition or possessing substantially similar properties, whether sold under the same name or under any other name, do forthwith cease and desist from directly or indirectly:

1. Disseminating or causing to be disseminated, by means of the United States mails or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, any advertisement which represents, directly or by implication:

(a) that the taking of said preparation will constitute an adequate, effective or reliable treatment for neuritis, sciatica, gout, neuralgia, fibrositis, bursitis, or any other kind of arthritic or rheumatic condition;

(b) that said preparation will arrest the progress or correct the underlying causes of, or will cure, neuritis, sciatica, gout, neuralgia, fibrositis, or bursitis, or any other kind of arthritic or rheumatic condition;

(c) that said preparation will afford any relief of severe aches, pains, and discomforts of neuritis, sciatica, gout, neuralgia, fibrositis, bursitis, or any other arthritic or rheumatic condition, or have any therapeutic effect upon any of the symptoms or manifestations of any such condition in excess of affording temporary and partial relief of minor aches, pains, or fever;

(d) that said preparation is remarkable, amazing, or sensational, or that it is a sensational new discovery of scientific research, or a new discovery;

(e) that persons afflicted with neuritis, sciatica, gout, neuralgia, fibrositis, bursitis, or any other kind of arthritic or rheumatic condition, so severely that such afflictions interfere with their normal habits of life or their ability to carry on their regular occupations will be enabled, by taking the drug preparation "Imdrin", to resume such normal habits or regular occupations;
126 (f) that the taking of said preparation will have any therapeutic effect upon the functioning of the enzyme systems of the blood or bones.

2. Disseminating or causing to be disseminated any advertisement by any means for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase in commerce, as "commerce" is defined in the Federal Trade Commission Act, of the drug preparation "Imdrin", which advertisement contains any of the representations prohibited in Paragraph 1 hereof.

Abner E. Lipscomb,
Hearing Examiner.

January 11, 1952.

127 UNITED STATES OF AMERICA.

BEFORE THE FEDERAL TRADE COMMISSION.

In the Matter of Rhodes Pharmacal Company, Inc. and J. Sanford Rose and Jerome H. Rose, individually and as officers of Rhodes Pharmacal Company, Inc.	Docket No. 5691.

NOTICE OF INTENTION TO APPEAL FROM THE INITIAL DECISION, FINDINGS AS TO THE FACTS, CONCLUSIONS AND ORDER OF THE TRIAL EXAMINER HEREIN.

(Received Jan. 30, 1952, Secretary.)

Respondents hereby serve this Notice of their Intention to Appeal from the Initial Decision, Findings as to the Facts, Conclusion and Order of the Trial Examiner herein, Abner E. Lipscomb, in accordance with Rule XXIII of the Rules of Practice under the Federal Trade Commission Act.

Frank E. Gettleman,
Arthur Gettleman,
Edward Brodkey,
Attorneys for Respondents.

Chicago, Illinois, January 29, 1952.

128 UNITED STATES OF AMERICA.

BEFORE THE FEDERAL TRADE COMMISSION.

* * (Caption—5691) * *

BRIEF OF ALL RESPONDENTS TO THE COMPLAINT CONSTITUTING THEIR APPEAL TO THE FEDERAL TRADE COMMISSION FROM THE INITIAL DECISION OF THE HEARING EXAMINER.

(Received Feb. 27, 1952, Secretary.)

Rhodes Pharmacal Company, Inc., a corporation, J. Sanford Rose and Jerome H. Rose, individually and as officers of said corporation, Respondents herein, by Frank E. Gettleman, Arthur Gettleman and Edward Brodkey, their attorneys, hereby respectfully submit to and file with the Federal Trade Commission their appeal from the Initial Decision of the Hearing Examiner herein, pursuant to Rule XXIII of the Rules of Practice of the Federal Trade Commission.

* * * * *

133 II.

Statement of the Case.

In its complaint, issued August 17, 1949, the Federal Trade Commission charged the respondents with having violated the provisions of the Federal Trade Commission Act in having disseminated in interstate commerce certain radio and newspaper advertising for the purpose of inducing the purchase of respondents' product "Imdrin." The complaint set out the formula of the product, a list of the radio stations on which advertisements of "Imdrin" had been broadcast and a list of newspapers said to have printed "Imdrin" advertising. It alleged that respondents' said advertisements, directly or by implication, represented that "Imdrin" is an adequate, effective and reliable treatment for all kinds of arthritis and rheumatism, that it will arrest the progress of, correct the underlying causes of and cure

all kinds of arthritis or rheumatism, that it is an adequate, effective and reliable treatment for the symptoms and manifestations of these diseases and will afford complete and immediate relief from the aches, pains and discomforts thereof, that it is a remarkable, amazing, sensational new discovery of scientific research, that its use by those afflicted with these ailments will enable such persons to resume their normal living and usual occupations and that it will correct any disturbance of and insure adequate function of the vital enzyme systems of the blood and bones. The complaint charged that these implications or statements are false and misleading in material re-
134 spects in that "Imdrin" will not do any of the several matters and things so construed and laid to its charge. The complaint concludes that said false advertisements have the capacity to mislead and have misled and deceived the purchasing public, to the prejudice and injury of the public and in violation of the Act.

Respondents' answer, filed September 8, 1949, admitted the identity of the corporate respondent, the official capacities with respect thereto of the individual respondents and the dissemination in interstate commerce by the means in question of certain advertising. It specifically denied, however, the publication or dissemination of any advertising importing what the Commission charged such advertisements implied and denied each and every the charges contained in the complaint that such representations were untrue. Respondents, in their answer, further denied that the representations in question were misleading, false or violative of the Act, but specifically averred that the representations made and disseminated by them concerning their product "Imdrin" were true; they further denied that the acts and practices complained of were unfair methods of competition prohibited by the Act. The answer further denied that the advertisements complained of had the capacity to or did, in fact, mislead or deceive the purchasing public, but charged that no purchasers were misled by any false representations whatsoever; and it was denied that any
135 acts or practices were to the prejudice or injury of the public.

Issue being so joined on every allegation of the complaint except the identity of the respondents and the dissemination of advertising in interstate commerce, hear-

ings were held before the Hon. Abner E. Lipscomb, Hearing Examiner, on the dates and at the places following:

Date	Place
September 27 and 28, 1950	New York, New York
November 20, 1950	Chicago, Illinois
November 21, 1950	Chicago, Illinois
January 22, 1951	Cleveland, Ohio
February 15 and 16, 1951	Chicago, Illinois
April 4, 1951	Chicago, Illinois
April 5, 1951	Chicago, Illinois
April 25, 1951	New York, New York
May 22, 1951	Chicago, Illinois
May 23, 1951	Chicago, Illinois
June 27, 1951	New York, New York
September 18, 1951	Ann Arbor, Michigan
October 16, 1951	Buffalo, New York

At these hearings, the advertisements of respondents on which counsel for the Commission relied were received in evidence, and testimonial evidence was adduced from the following persons who testified for the Commission: Jerome H. Rose, J. Sanford Rose, Dr. Ephraim Shorr, Dr. Irving Graef, Dr. Edward F. Rosenberg, Dr. Evan M. Barton, Dr. Ralph Wolpaw, Dr. William Dodd Robinson and Dr. L. Maxwell Lockie. On behalf of respondents, the testimony of the following persons was taken: Dr. Seymour W. Weisberg, Dr. Arnold Black, Dr. Laurence H. Mayers, Dr. Aaron Arkin, Abraham M. Breiman, Peter J. Maretta, Mrs. Rhoda Lipsie, Mrs. Ida Klaus, Mrs. Ingeborg Larsen, King Hayes, Arthur Fremault, Louis Jacobs, E.
136 H. Carr, Mrs. Olive Mae Carr, Mrs. Katherine Gott, Bernard W. Vinissky, Mrs. Marjorie Johnson Marchena, Mrs. Betty Raaberg and Dr. Edward B. Miller. The transcript of the testimony of these witnesses aggregates 1219 pages. So much of the substance thereof as respondents feel they are required to abstract or to reproduce in full to substantiate their exceptions herein appears in the section of this Brief numbered "IV—Argument", under the appropriate headings.

On January 4, 1952, the Hearing Examiner entered his order closing the record, and thereafter, on January 11, 1952, filed his Initial Decision.

In his Initial Decision, the Hearing Examiner found that the corporate and individual respondents were and had

been engaged in the manufacture and sale in interstate commerce of a medicinal preparation called "Imdrin", the formula for which he set out in his findings, and concerning which there is no dispute. The Hearing Examiner further found that the respondents had disseminated certain advertisements of their product, by radio broadcast and publication in newspapers, for the purpose of inducing its purchase. The examiner set out in his said findings excerpts from several of such advertisements which he characterized as "typical". In Paragraph Four of his findings, the examiner found that the advertising statements of respondents which he had quoted as "typical"
imported that "Imdrin" is a newly discovered drug
137 effective in the treatment of rheumatic and arthritic
conditions, that it possesses therapeutic properties curative of such conditions and that it is offered as a treatment for them. He further found that the numerous statements contained in respondents' advertising such as "no faster arthritic pain relief known", "relief of nagging aches, pains, swelling and stiffness accompanying arthritic and related illness", "one of the fastest arthritic and rheumatic pain relievers known to medical science", and "it is a reliable, scientific remedy tested by doctors in famous hospitals, and offered to bring symptomatic relief to sufferers from arthritis, fibrositis and certain forms of rheumatism, sciatica and neuritis" and others similar thereto relating to the relief of the symptoms and manifestations of these diseases do not sufficiently qualify or restrict respondents' other representations, in the light of examiner's inference as to their meanings to limit these representations to an offer of the product as a palliative. The examiner found that respondents offered "Imdrin" as a "cure". He further found that since respondents represented that their product would enable users to live happy, comfortable lives once again, that that representation meant only that "Imdrin" is an effective medication for the complaints in question. In the light of such reasoning, the Trial Examiner found specifically that by their advertisements respondents represented that "Imdrin" was a
"cure" for all kinds of rheumatism and arthritis and
138 as such, was an effective and reliable treatment for
those diseases and did arrest their progress and correct their underlying causes. He further specifically found that respondents represented that "Imdrin" constituted

an adequate, effective and reliable treatment for the symptoms of those diseases and did afford complete and permanent relief from the pains thereof. He further found respondents' representations to mean that their product was a remarkable, amazing, sensational new discovery of scientific research; that users of it would be enabled to resume their normal habits of life and their regular occupations; and that "Imdrin" would correct any disturbance of the vital enzyme systems of the blood and bones. In Paragraph Six of his findings, the examiner found that the many kinds of rheumatism and arthritis were characterized by various pathological conditions and progressed differently. He therefore concluded that all these forms required different kinds of treatment, and from that inference further concluded that proper treatment for these diseases must be predicated upon individual detailed diagnosis. In Paragraph Seven the examiner found that there is no drug or combination of drugs which will cure rheumatism and arthritis. In Paragraph Nine of his said findings, the examiner found, in effect, that "Imdrin" would not cure rheumatism or arthritis, arrest their progress, correct their underlying causes, or ameliorate the pains of those diseases beyond the temporary and partial relief afforded by the salicylate content of the preparation as that might relieve minor aches and pains in the individual case. 139 He further found that "Imdrin" would not enable persons forced by such ailments to discontinue their normal habits of life or regular occupations to resume such habits or occupations. The Hearing Examiner concluded that respondents' advertising was accordingly false and misleading, had misled a substantial portion of the purchasing public, constituted false advertisements within the meaning of the Act and was prejudicial and injurious to the public. He accordingly recommended that respondents be required to cease and desist from so advertising, in manner and form as is specifically set out in his proposed Order. The details of that Order will be hereinafter referred to in the portion of this Brief reserved for argument under the appropriate heading.

Respondents thereupon filed their notice of intention to appeal, in accordance with Rule XXIII of the Rules of Practice of the Federal Trade Commission, and in support thereof file this Brief.

140 III.

Exceptions to the Findings of Fact, Conclusions of Law and Order in the Initial Decision of the Hearing Examiner.

The respondents above named except to the Initial Decision, Findings as to the Facts, Conclusion, and Order of Abner E. Lipscomb, the Hearing Examiner duly appointed herein, filed January 11, 1952, and in particular, to the following findings of facts and conclusions of law contained in said Initial Decision:

First: To so much of the findings of the Hearing Examiner contained in Paragraph Four of his Initial Decision as state, in substance, that respondents' advertising means that the preparation "Imdrin" is a newly discovered drug, that it possesses therapeutic properties curative of rheumatic and arthritic conditions, that it is offered as a treatment for same, that respondents do not sufficiently qualify or restrict their general representations to constitute them offers of "Imdrin" only as an analgesic and antipyretic for the alleviation of the pains of rheumatism and arthritis, and that the language of respondents' advertisements imply that their product effects cures.

Second: These respondents, also except to the Hearing Examiner's rejection of respondents' proposed finding number 2 "That the advertisements so disseminated by respondents mean only that 'Imdrin' will provide relief of pain of arthritis or rheumatism and do not mean that 'Imdrin' will provide treatment and cure of arthritis and rheumatism," which the Hearing Examiner rejected as "contrary to the implications inherent in respondents' advertisements."

141 *Third:* Respondents further except to so much of the findings of the Hearing Examiner contained in Paragraph Six of his Initial Decision as find that since the progress and development of the diseases vary, dependent upon their different types and the differences of individuals suffering from them, the various forms of rheumatism and arthritis therefore require essentially different treatment. Respondents submit that this is definitely a non sequitur, since it is obvious that the same drugs may well provide symptomatic relief, as from pain and suffering, in greater or less degree, in a very large number of

different types of the diseases in question, without regard to the stage of progress of any such disease or the particular individual involved.

Fourth: Respondents except to the finding of the Hearing Examiner contained in Paragraph Eight of the Initial Decision that the calcium succinate content of "Imdrin" has no significant therapeutic value in the treatment of arthritic or rheumatic conditions, since the evidence in the record on this point, if any, was completely inconclusive and highly speculative. It is further submitted that with respect to the finding that the caffeine contained in "Imdrin" has no significant therapeutic value in the treatment of these diseases, there is no evidence in the record upon which such a finding could be based. On the contrary, it is well known that caffeine is a stimulant.

Fifth: Respondents except to the finding of the Hearing Examiner set out in Paragraph Eight of his Initial Decision wherein the Hearing Examiner concludes that since manganese salicylate and acetylsalicylic acid are the only ingredients of "Imdrin" possessing active anal-
142 gesic properties and since their use and effect has been known for many years and since the latter of these is commonly called "aspirin," that it follows that "Imdrin" does not constitute a new discovery of scientific research. Respondents submit that there is not a scintilla of evidence in the record that there is any other product combining these same ingredients, and that their effect in such combination cannot be described, nor was it described, by any witness who had ever tried this particular preparation or combination of ingredients. On the contrary, respondents adduced voluminous testimony of actual users of the preparation itself, all of whom described its particular beneficial effect upon themselves.

Respondents further except to the finding of the Hearing Examiner contained in said paragraph of his Initial Decision that if the effect of "Imdrin" upon the pains of rheumatism and arthritis is limited and temporary, such drug cannot properly be called remarkable, amazing or sensational. It is submitted that these terms are merely permissible puffing or dealer's talk and are not shown in any respect to be untrue when literally or otherwise interpreted.

Sixth: Respondents except to so much of the findings of the Hearing Examiner contained in Paragraph Nine of his Initial Decision as recites that "Imdrin," however

taken, will not ameliorate the aches, pains and discomforts of any arthritic or rheumatic condition to any extent beyond the temporary and partial relief thereof; also to the finding therein contained that "Imdrin" will have
143 no significant effect upon severe aches, pains and discomforts, and will afford temporary and partial relief of only minor aches and pains; also to the finding that "Imdrin" cannot be depended upon to have any effect whatever upon the symptoms accompanying any arthritic or rheumatic condition.

Seventh: Respondents also except to the refusal of the Hearing Examiner herein to find that the use of "Imdrin" as directed has relieved and will relieve the pains, suffering, inflammation, stiffness and redness of persons afflicted with rheumatism and arthritis, and has enabled them to resume their normal life, as requested by Respondents in their proposed finding No. 9.

Eighth: Respondents except to the rejection by the Hearing Examiner of their proposal No. 4, that he find that "since the causes of most rheumatism and arthritis are unknown, it is both unnecessary and impossible to remove these causes in order to effect proper treatment. Such treatment is confined to the relief of the symptoms of rheumatism and arthritis."

Ninth: Respondents except to the refusal of the Hearing Examiner to find that the amount of salicylates present in "Imdrin" would provide relief from pain and suffering in the cases of the majority of all persons afflicted with rheumatism or arthritis. The testimony of the various doctors who so testified is to be found at various points in the record. (Tr. 628, 636, 637, 647, 664, 671, 685, 688 and 686.)

Tenth: Respondents except to the refusal of the
144 Hearing Examiner to find that pain is completely subjective and is incapable of definition and classification as to degree of pain suffered. Respondents cannot agree that such proposition is either immaterial or contrary to the greater weight of the evidence herein. (Tr. 241, 240, 345, 348, 534, 579, 580 and 686.)

Eleventh: For the same reasons, Respondents except to the rejection by the Hearing Examiner of their proposal that most cases of rheumatism and arthritis are ambulatory and mild. (Tr. 240, 647, 654, 663, 706, 1142, 1195, 1207, 516 and 526.)

These Respondents similarly except to the conclusion of the Hearing Examiner that all of Respondents' acts and practices are to the prejudice and injury of the public and constitute unfair and deceptive acts in commerce, contrary to Statute. This conclusion is, as the name implies, only conclusory and adds nothing to any of the foregoing specific findings.

Twelfth: For the reasons set out in the Argument contained in Part IV of this Brief, Respondents except to the form and content of the order to cease and desist recommended by the Hearing Examiner as a part of his Initial Decision. Specifically, Respondents except to the terms of said order as they prohibit Respondents from disseminating in interstate commerce advertisements which represent that "Imdrin" is an adequate treatment for rheumatism or arthritis, that it will arrest their progress, correct their underlying causes or cure such conditions; but more specifically Respondents except to the prohibi-
145 tion by said order of their advertising that "Imdrin" will afford relief of the pains of arthritis or rheumatism or have any therapeutic effect upon any of its symptoms beyond affording temporary and partial relief of minor pains; and Respondents except to the prohibition contained in said order against their representing that "Imdrin" is a remarkable, amazing, sensational new discovery of scientific research, or that it will enable users to resume their normal habits or regular occupations.

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IV.

Argument.

1. Each and Every Finding of the Trial Examiner Must Be Supported by Substantial Evidence, Which Is Substantial in a Legal Sense.

It seems unnecessary at this late date to belabor the point, which the Commission will immediately recognize, that the findings of the Trial Examiner cannot stand unless they are based on legally substantial evidence to be found in the record. As Judge Major said in *Kidder Oil Co.* v. *Federal Trade Commission*, 7 Cir., 117 F. 2d 892, 894 (1941):

> "As is common in cases of this character, the primary question for decision is whether the findings of

fact as made by the Commission, upon which the cease and desist order is predicated, are sustained by *substantial evidence.*"

In that case, the Court found that the decision of the Commission as to the facts was not conclusive, since

"The conclusion follows, from what we have said, that the Commission's finding that petitioner's product (graphite motor oil) produces no beneficial result under 'boundary' conditions of lubrication, is without substantial support. On the other hand, the record convincingly discloses to the contrary. There is a difference of opinion, however, as to the extent of such benefits." *id.* p. 901.

The duty of a court on petition to set aside an order to cease and desist "is to examine the record to ascertain whether the findings are supported by the evidence." *National Silver Co.* v. *Federal Trade Commission*, 88 F. 2d 425 (1937), *Federal Trade Commission* v. *Curtis Publishing Co.*, 260 U. S. 568, *Federal Trade Commission* v. *Paramount Famous-Lasky Corp.*, 57 F. 2d 152 (CCA2).

Specifically, the Federal Trade Commission Act requires substantial evidence to support findings of the Commission before they can be said to be in any sense "conclu-
147 sive." In *Gelb* v. *Federal Trade Commission*, 2 Cir., 144 F. 2d 580, 582 (1944), the Court said:

"We are not unmindful of the statutory admonition that the Commission's findings as to the facts, 'if supported by evidence, shall be conclusive' • • • But this provision must be interpreted as requiring *substantial evidence* as the basis of findings in order to render them conclusive. *J. B. Lippincott Co.* v. *Federal Trade Commission*, 3 Cir., 137 F. 2d 490, 491 and authorities there cited."

And in the *Lippincott* case, *supra*, the Court in the Third Circuit in 1943, citing *Consolidated Edison Co.* v. *National Labor Relations Board*, 305 U. S. 197, 229, held that

"The requirement of evidence to support findings means *substantial evidence.*"

Compare also *National Labor Relations Board* v. *Columbian Enameling & Stamping Co.*, 306 U. S. 292, 299, where the necessity for *substantial evidence* was spoken of as

being applicable to findings by administrative bodies. The Court in the *Lippincott* case held further:

> "We entertain no doubt that the provisions of the Federal Trade Commission Act as to the conclusiveness of the Commission's findings requires that the findings be supported by *substantial evidence.*"

The importance of this rule was stressed by the Court in the Seventh Circuit in 1946 in the case of *Carlay Co.* v. *Federal Trade Commission,* 153 F. 2d 493, 496, where it was pointed out that:

> "The rule of *substantial evidence* is one of fundamental importance and marks the dividing line between law and arbitrary power; and the requirement that a finding must be supported by *substantial evidence* does not go so far as to justify orders without a basis in evidence having rational, probative force."

And in an attempt further to define *substantial evidence* and to point out its characteristics, the Court continued:

148 "* * * evidence which is substantial * * * (affords) a substantial basis of fact from which the fact in issue can be reasonably inferred. (Citing cases). Substantial evidence is more than a scintilla, and must do more than create a suspicion of the existence of the facts to be established. 'It means such *relevant* evidence as a *reasonable mind* might accept as adequate to support a conclusion', *Consolidated Edison Co.* v. *N. L. R. B.,* 305 U. S. 197, 229; *N. L. R. B.* v. *Columbian Enameling & Stamping Co.,* 306 U. S. 292, 299."

And by way of further elaboration with respect to the concept, the Court said:

> Substantial evidence "excludes vague, uncertain or irrelevant matter. It implies a quality and character of proof which induces conviction and makes a lasting impression on reason." Citing the *Consolidated Edison Co.* and *Columbian Enameling & Stamping Co.* cases, *supra,* and *N. L. R. B.* v. *Thompson Products, Inc.,* 6 Cir., 97 F. 2d 13, 15.

While the foregoing descriptions of substantial evidence do not provide standards of mathematical precision by which to weigh or measure the evidence in the record, they do point out, meaningfully, that evidence, to be substantial,

must appear in the record, must provide a reasonable basis for inference, must have rational and probative force, must be more than a scintilla, must do more than create a suspicion, guess or conjecture of the existence of the fact to be established, and must be relevant and adequate to support a conclusion when tested by the logical processes. It excludes the vague and the uncertain and induces conviction by making a lasting impression on reason.

By way of illustration of types of evidence in the record and combinations of circumstances which the courts have refused to treat as substantial, the Commission's attention is respectfully directed to the case of *Gelb* v. *Federal Trade Commission*, 2 Cir., 144 F. 2d 580, 582 (1944). In that 149 case, it was held that where an expert for the Commission testified to his opinion, from analysis of the product "Clairol" that it *could not* recondition the hair, where many witnesses affirmatively stated from experience that it *did* and not a single witness who testified from experience in using the preparation *denied that it did* leave the the hair "reconditioned", this expert's inference to the contrary, based solely on his chemical analysis, without experience in the use of the preparation, cannot be regarded as *substantial evidence* that the product is incapable of reconditioning the hair.

As respondents will hereinafter point out, the evidence received in this case is not of such quality as satisfies the requirements of the substantial evidence rule and will not support the findings of fact, conclusions of law and recommended order of the Trial Examiner contained in his Initial Decision.

2. There Must Be a Basis in Substantial Evidence for the Findings of the Trial Examiner Underlying Each Issue in the Case.

Since the complaint filed by the Commission herein was traversed in all material respects by the answer of respondents, the record must disclose substantial evidence to support each element of the statutory violation charged. Respondents admitted only the dissemination in interstate commerce of the radio and newspaper advertising of their product "Imdrin" which counsel for the Commission charged was false and misleading. They specifically denied that the import of this advertising was as counsel for the Commission had construed it in the complaint; they further

denied that any representation made in such advertising was false, but asserted that it was true; they further denied that such advertising had misled or deceived or had
150 the tendency to so mislead or deceive any substantial portion of the purchasing public; and they specifically denied that their advertising opposed the public interest. It should accordingly follow that the record must disclose substantial evidence to support the Trial Examiner's findings (1) that respondents made certain specific representations in accordance with inference reasonably to be drawn from the language used, (2) that these representations are false, (3) that they have misled or have a tendency to mislead a substantial portion of the purchasing public and (4) that they are against the public interest.

3. There Is No Substantial Evidence in the Record Which Will Reasonably Support the Finding of the Trial Examiner That Respondents' Advertising Complained of Means That "Imdrin" Is a Newly Discovered Drug, That It Possesses Therapeutic Properties Curative of Rheumatic and Arthritic Conditions, That It Is Offered As a Treatment for Same and That It Is Not Offered Only as an Analgesic and Antipyretic for the Alleviation of the Pains of Rheumatism and Arthritis.

The Hearing Examiner found in Paragraph Four of his Initial Decision, in substance, that respondents' advertising means that the preparation "Imdrin" is a newly discovered drug, that it possesses therapeutic properties curative of rheumatic and arthritic conditions, that it is offered as a treatment for same, that respondents do not sufficiently qualify or restrict their general representations to constitute them offers of "Imdrin" only as an analgesic and antipyretic for the alleviation of the pains of rheumatism and arthritis, and that the language of respondents' advertisements imply that their product effects cures. Respondents' proposed finding number 2 "That the advertisements so disseminated by respondents mean only
151 that "Imdrin" will provide relief of pain of arthritis or rheumatism and do not mean that "Imdrin" will provide treatment and cure of arthritis and rheumatism was rejected as "contrary to the implications inherent in respondents' advertisements."

The attention of the Commission is respectfully directed to the fact that nowhere in the advertisements selected by

the Hearing Examiner are there any express representations such as the Examiner has seen fit to imply. He has arrived at the findings he has numbered 1 to 5, inclusive, in Paragraph Four of his Initial Decision by drawing what he has characterized as reasonable inferences from the language used. He has specifically found, by such process of inference, that respondents' ads mean:

1. That "Imdrin" is an adequate, effective and reliable treatment for all forms of rheumatism and arthritis, will arrest their progress, correct their underlying causes, and cure such diseases;
2. That "Imdrin" is an adequate, effective and reliable treatment for the symptoms of these diseases and will afford complete, permanent relief from the pains thereof;
3. That "Imdrin" is a remarkable, amazing, sensational new discovery;
4. That persons taking "Imdrin" might be enabled to resume their normal habits of living; and
5. That "Imdrin" will correct any disturbance of the vital enzyme systems of the blood and bones.

In their proposed findings, conclusions and order, respondents pointed out to the Hearing Examiner that "To determine the true meaning of respondents' advertise-
152 ments the Trial Examiner has before him (1) the advertisements themselves, (2) the testimony of one Dr. Edward F. Rosenberg as to what he believed his patients would understand the ads to mean (Tr. 258 to 313, and 558 to 572), and (3) the testimony of Abraham M. Breiman, an investigator and specialist in consumer research (Tr. 720 to 756), who testified to the results of a survey he conducted in order to learn what real members of the purchasing public would understand the "Imdrin" ads to mean."

It is submitted that the Hearing Examiner based his decision as to what respondents' ads meant entirely upon the inferences which he himself drew from them, in or out of context. He has completely ignored the testimony of Dr. Edward F. Rosenberg, who appeared for the Commission and testified in part as an expert on consumer reaction to the language of advertisements, and with that respondents have no quarrel; but, it is submitted, the Trial Examiner had no right to ignore the testimony of the investigator and specialist in consumer research, Abraham M. Breiman, since this individual described with particularity the results of surveys he had conducted to determine what a representative group of consumers would understand respond-

ents' advertisements to mean. There is no suggestion in the Initial Decision that the Hearing Examiner has taken Mr. Breiman's testimony and findings into account. If it was the intention of the Hearing Examiner to ignore this testimony, respondents, we believe, have a right to know why. It was not contradicted by any other evidence in the record.

At the outset, it should be made clear that respondents are familiar with and fully appreciative of the rule
153 of law laid down in *Gulf Oil Corporation* v. *Federal Trade Commission*, 5 Cir., 150 F. 2d 106 (1945) that the meaning conveyed by advertisements to the public is a question of fact for the Commission to determine and its conclusion may not be disturbed unless arbitrary or clearly wrong. Yet we know that the courts have not hesitated to reverse the Commission in cases where the Trial Examiner or Commission has found meaning in advertising representations not justified by the language there used. In *Folds* v. *Federal Trade Commission*, 7 Cir., 187 F. 2d 658, 661 (1951), Judge Duffy, speaking for the Court, said:

> "The real basis for the Commission's complaint was that petitioners represented that Kleerex was an effective treatment for pimples. No such representation was ever made, but the Commission purported to find in the advertisements an implied representation to that effect, * * * We do not think that the Commission's finding that petitioners made such a representation is supported by substantial evidence. The action of the Commission is subject to the same criticism which this court made in *International Parts Corp.* v. *Federal Trade Commission*, 7 Cir., 133 F. 2d 883, where the manufacturer of an automobile muffler advertised that the metallic finish prevented rust and corrosion. The Commission there made a finding that the use of the word 'prevent' implied 'permanency'. This court there vacated the Commission's cease and desist order."

And in the *Gulf Oil Corporation* case, *supra*, the Court in the Fifth Circuit held that upon hearing before the Federal Trade Commission upon complaint charging a corporation with engaging in unfair practices in interstate commerce in advertising an insecticide manufactured by the corporation, testimony of witnesses drawn from the general public of impressions made upon their minds upon reading the advertisements was admissible against the contention that

such testimony was a matter of opinion for the Commission to decide. The courts and the Commission should
154 be definitely interested in all expressions of consumer reaction to the advertising in question.

Respondents well know that the Circuit Court of Appeals in the Seventh Circuit decided in the case of *Zenith Radio Corp.* v. *Federal Trade Commission*, 7 Cir., 143 F. 2d 29, 31 (1944) that

> "The Commission was not required to sample public opinion to determine what the petitioner was representing to the public."

But the Court went on to say that

> "The Commission had a right to look at the advertisements, *consider the relevant evidence in the record that would aid it in interpreting the advertisements*, and then decide for itself whether the practices engaged in by the petitioner were unfair or deceptive, as charged in the complaint."

It should be noted that the Court did not say it would regard it as sufficient if the Commission considered the text of the advertisements alone, except in the event there was no other evidence in the record which would aid in determining what the advertisements meant. In that case, the Court did not propose to require the Commission to go out of its way to find and adduce evidence in point from the purchasing public. But it seems obvious that in any case where there is such evidence in the record as will serve to enlighten the Commission as to the true meaning of these representations, the Court did not intend to authorize the Commission to disregard it. On the contrary, the courts have always held that the decision of the Commission must be predicated on the entire record in the case.

On its part, the Commission has in many cases sampled public opinion as to the meaning of advertising representations to both lay persons and professional experts and
155 has adduced testimony in hearings with respect thereto. On the basis of such evidence as to consumer reaction, part of it very strained, remote and conjectural, numerous cease and desist orders have been entered and this evidence has been taken into account by the courts on review. In *Gulf Oil Corporation* v. *Federal Trade Commission*, 5 Cir., 150 F. 2d 106, 108 (1945), Judge Lee collected these cases in a footnote. They include *Stanley*

Laboratories v. Federal Trade Commission, 9 Cir., 138 F. 2d 388, 391; *Charles of the Ritz* v. *Federal Trade Commission*, 2 Cir., 143 F. 2d 676, 679; *Aronberg* v. *Federal Trade Commission*, 7 Cir., 132 F. 2d 165, 167, 168; *D. D. D. Corporation* v. *Federal Trade Commission*, 7 Cir., 125 F. 2d 679, 681, 682; *Ford Motor Co.* v. *Federal Trade Commission*, 6 Cir., 120 F. 2d 175, 182; *Hall* v. *U. S.*, 5 Cir., 267 Fed. 795, 797. With respect to the propriety of considering such evidence of public reaction to advertising, the Court said:

> "The issue was the impression made or likely to be made upon the reading public by the petitioner's representations of the good qualities of its product, as conveyed in the advertisements. The testimony of witnesses drawn from the general public of the impressions made upon their minds upon reading the advertisements was admissible. *This procedure in investigations of this kind has been in use over a period of years and has received the sanction of the courts.*"

Respondents, on their part, produced in evidence the results of a survey of 300 persons (Tr. 728), including 13 interviews obtained of customers in drug stores (Tr. 728), and the balance in factories, homes and retail establishments. These were interviews of factory workers, office workers, housewives, business men, some educated more so, some less so (Tr. 728). Only a small number of these persons were known to the sampler (Tr. 737). Most of them were strangers. Each was shown representative sam-
156 ples of the advertising in question (Commission's Exhibits 6, 8 and 13—Tr. 731) and, after having been allowed to read and study these ads, was asked successively and in the alternative (Tr. 730, 743) whether the advertising promised him or her relief from the pain of arthritis or rheumatism or a cure or effective treatment of those diseases. The results of the first or February part of the survey were, of 150 people interviewed 137 stated that these ads meant that "Imdrin" would provide relief of pain, and the balance of 13 said that the ads meant that "Imdrin" would provide treatment cure; that is 91.3 per cent of those consulted thought the ads meant or implied pain relief, while only 8.7 per cent thought that the ads meant that "Imdrin" would provide treatment or cure (Tr. 731). Similarly, of another 150 people interviewed in April, 1951, 136 or 90.7 per cent stated they understood the ads to

mean that "Imdrin" would provide relief of pain of rheumatism and arthritis, as against 14 or 9.3 per cent who said that the ads meant treatment or cure (Tr. 732).

In the light of this specific testimony as to consumer understanding of the meaning of advertising, respondents believe that no amount of speculation or inference will suffice to show the contrary. That the courts are interested in knowing what the consuming public would testify an advertising representation would lead them to believe is evident from the opinion of Judge Major in *Allen B. Wrisley Co., et al.* v. *Federal Trade Commission*, 7 Cir., 113 F. 2nd 437, 440. In that case it was *stipulated* that if thirty persons, members of the consuming public, were called to testify, sixteen would say that they understood "Olive Oil Soap" (so labeled) to mean "one the oil content of which is 100% olive oil." The Court said:

157 "In our judgment, such a stipulation can be given little, if any weight, and cannot be said to be substantial in view of the unanimous testimony to the contrary given by witnesses who appeared personally."

On the hearing of this case, counsel for respondents made this statement for the record (Tr. 755, 756):

> "As indicated by the Trial Examiner when we were off the record, and I am in complete agreement with his statement in this regard, that there is no point in putting these records (of the survey) of Mr. Breiman in the record.
>
> "I would, however, like to make this statement for the record, and that is that we are ready, by any means, to permit the government to have the names of these various people who were asked the two questions testified to by Mr. Breiman, and whose responses thereto were recorded here."

Respondents believe their survey was fair, thorough and revealing and provides the Trial Examiner with his only reliable evidence of consumer reaction.

An analysis of the results of the survey shows that to the ordinary consumer respondents' advertisements do not mean that "Imdrin" is an adequate treatment for rheumatism and arthritis, except in the sense that alleviation of pain is a treatment, or that it will arrest the progress or correct the underlying causes of these diseases or cure them; however, respondents have little quarrel with the

Hearing Examiner's finding that their product is a reliable treatment for the symptoms of these diseases which, it is the position of these respondents, "Imdrin" will do; they cannot agree, however, that there is any implication in their advertising that "Imdrin" will afford complete or permanent relief from these aches and pains. The word "relief" itself implies something temporary or transitory. There is not a scintilla of evidence that "Imdrin" is not a new combination of ingredients or a new product of scientific research.

158 As to the Hearing Examiner's finding numbered 4 in said Paragraph Four, that persons taking "Imdrin" will be enabled to resume their normal habits of life, respondents have no quarrel with the finding that such representation is made, but say that all the evidence in the record shows that it is true.

It is submitted that there is nothing in the record supporting the Hearing Examiner's finding that "Imdrin" ads represent that that product will correct any disturbance of the vital enzyme systems of the blood and bones.

The foregoing inferences of the Trial Examiner are neither logical nor reasonable, they have no adequate support in evidence in the record, but the only factual evidence in the record is directly opposed to these findings.

Again, in *Stanley Laboratories, Inc.* v. *Federal Trade Commission*, 9 Cir., 138 F. 2d 388, 391, both doctors and lay persons were permitted to testify to the impressions they received and what they thought was meant by the expression "MD Medicated Douche Powder" and whether or not the abbreviation MD would mislead them into believing that the product in question claimed the endorsement of physicians. The Court said:

> "Several lay witnesses testified that the petitioners' advertising matter gave them the impression that the medical profession made or endorsed MD Powder. Counsel objected to the 'groundwork' laid for that testimony. As we shall see later, however, such technical objections are out of place in the consideration of testimony given before an administrative board such as the Federal Trade Commission."

But completely independent of the sole evidence in the record on the actual reactions of flesh and blood individuals to the language of respondents' advertising repre-

159 sentations and what those ads meant to them as shown

by respondents' survey of three hundred persons, is the meaning of the language used itself, in the light of common sense, reason and certain constructions of the courts.

In *International Parts Corporation* v. *Federal Trade Commission,* 7 Cir., 133 F. 2d 883, 886, Judge Minton observed:

> "The petitioner will be presumed to have used the word (prevents) in its ordinary and commonly accepted understanding, in the absence of any showing to the contrary."

Respondents cannot believe that any holding of any court which has for its purpose the excusing of ignorant members of the purchasing public, if such they be, from interpreting advertisements with a dictionary in one hand, was intended to exempt those persons from all responsibility for knowing the commonly accepted meaning of simple words and expressions. In the *International Parts Corporation* case, above, Judge Minton said; starting at page 885 of the opinion:

> "In Paragraph 2 of the Commission's order, the petitioner is ordered to cease and desist from representing that the finish on its mufflers permanently prevents rust or corrosion. The petitioner never represented that the finish on its mufflers would prevent rust *permanently.* The word "permanently" was interpolated by the Commission. The Commission's finding is that, 'While the finish may serve to prevent rust and corrosion for a *limited period of time,* it does not afford permanent protection against such conditions.' (Our (the Court's) emphasis). The petitioner never said that it did afford permanent protection against such conditions. The petitioner said only that the finish prevents rust and corrosion. The Commission admits that the finish does prevent rust and corrosion for a period of time, but states the petitioner is misrepresenting the facts when it says the finish will prevent rust and corrosion *permanently.* The Commission cannot interpolate into the petitioner's representations words not there, and then find the petitioner guilty of misrepresentation because the petitioner's product does not meet the Commission's revised representations. The word 'prevents' is a word of common understanding, and the common acceptation of this

word carries no connotation of permanency. The petitioner will be presumed to have used the word in its ordinary and commonly accepted understanding, in the
160 absence of any showing to the contrary. Without the word 'permanently' interpolated, there is no misrepresentation. The word 'permanently' is the Commission's word, not the petitioner's. The petitioner answers for its own representations, and not those of the Commission. The evidence does not support Paragraph 2 of the order."

Applying this sensible, well reasoned decision to the facts of this case, we see that the Trial Examiner's proposed order to cease and desist would require Respondents, in Paragraph 1(c) thereof, to cease and desist from representing that their preparation will afford "relief" from the pains of various kinds of rheumatism or arthritis in excess of temporary and partial "relief." Respondents' advertisements set out by the Trial Examiner in his Initial Decision show exactly what respondents claim "Imdrin" will do to pain: they say "No Faster Arthritic *Pain Relief* Known", "• • • *relieving* the agonizing pains of rheumatism and arthritis," "reduction of pain," "*Relieves* Pain and Suffering", "• • • the wonderful *relief* from Imdrin, "• • • arthritic and rheumatic pain *relievers*", "• • • designed to *aid in the relief* of nagging aches, pains • • •" and other statements of like import. Applying the language of Judge Minton in his opinion in the *International Parts Corporation* case, *supra,* the Respondents never represented that their product "Imdrin" would relieve pain *permanently.* The word "*permanently*" was interpolated by the Trial Examiner. His findings is that "The drug preparation 'Imdrin' • • • will afford *temporary and partial* relief of only minor aches, pains and discomforts" (Our emphasis.) The respondents never said that it did afford permanent relief from such conditions. They said only that it affords "relief" or "aids in relief." The Trial
Examiner admits that "Imdrin" does provide relief
161 from pain for a period of time, but states that Respondents are misrepresenting the facts when they say "Imdrin" will relieve pain *permanently.* The Trial Examiner cannot interpolate into the Respondents' representations words not there, and then find the Respondents guilty of misrepresentation if Respondents' product does not meet the Trial Examiner's revised representations. The

word "relieves" is a word of common understanding, and the common acceptance of this word carries no connotation of permanency. Respondents will be presumed to have used the word in its ordinary and commonly accepted understanding. Without the word "permanently" interpolated, there is no misrepresentation. The word "permanently" is the Trial Examiner's word, not the Respondent's answer to their own representations, and not those of the Trial Examiner.

And to demonstrate to the Commission that the words "relief" and "relieve" have been passed on by the courts and held not to contain any implication of permanency, Respondents cite the authority of Judge Major's decision in the case of *D. D. D. Corporation* v. *Federal Trade Commission*, 7 Cir., 125 F. 2d 679, 682 (1942), where the Court said in point (4) of its opinion:

> "We are also of the view that the word 'temporary' as used in Paragraphs 1(a), (b), (c), (e) and (g) of the Commission's order should be eliminated. We see no reason why petitioner should not be permitted to represent its product as a relief for itching. *It does not cure either the itch or its cause, but it does afford relief.* (Emphasis ours.) One of the definitions given by Webster for the word 'relief' is 'lessens evil, pain, etc.' The words 'relief from itching' could, in our minds carry no implication to the Public that the product was a permanent cure either for the symptoms or the disease. The word 'temporary' carries an uncertain meaning. As the Commission's doctor stated: 'It might mean a few minutes or an hour or so.' To require its use would serve no purpose in the protection of the public, but might limit petitioner in truthfully representing its product."

162 The foregoing quotation might likewise be paraphrased to include the facts in Respondent's case. We note only that the Court held that there is no implication of permanency, to the public, in the representation of relief from pain, that the use of "temporary" is undesirable and that the Court used Webster's dictionary as a source of authority to make the first determination.

Further, the Trial Examiner makes much of Respondents' use of terms like "Amazing" and "Sensational" in its advertisements. He says such a drug preparation as "Imdrin" "Is not remarkable, amazing or sensational

(Paragraph Eight of his Findings.) and he implies that this is a misrepresentation which will mislead or deceive the public. Fortunately our courts have also passed on the propriety of the use of words of this kind. In the well known case of *Kidder Oil Company* v. *Federal Trade Commission*, 7 Cir., 117 F. 2d 892, the Court said, at page 901:

> "Petitioner's representation that its product will enable a motor car to operate an '*amazing* distance' (Emphasis ours) without oil, or that its product is a 'perfect' lubrication, evidently is some exaggeration. To what extent, however, it is difficult to say. Such terms are largely a matter of personal opinion. What might be an 'amazing distance' to one person might cause no surprise to another. So far as we know, there is nothing 'perfect' in this world, but still it is a common term, which undoubtedly means nothing more than that the product is good or of high quality * * *. As used by petitioner, * * * we are of the opinion that they are nothing more than a form of 'puffing', not calculated to deceive."

The Hearing Examiner also takes exception to Respondents' use of the term "new" in their advertising wherein they characterize "Imdrin" as a new, scientific discovery. His position, in effect, is that so long as Respondents' product contains as one of its principal active ingredient what is commonly called aspirin, it cannot truthfully
163 be described as "new." It is Respondents' contention that when a medicinal product employs a new formula resulting in a different end product, it may be correctly designated a new product, even if the formula includes certain long known active ingredients. This to us makes sense, and the case of *Federal Trade Commission* v. *Standard Education Society, et al.*, 2 Cir., 86 F. 2d 692, 696 (1936), provides scant authority contra and is easily distinguishable on the facts from the case at hand. There the Court did say:

> "The fourth clause (of the cease and desist order, forbad calling the work (an old encyclopedia with new loose-leaf supplements) a 'recently completed, *new*, and up-to-date encyclopedia.' The findings scarcely support so broad a prohibition. * * * Of course, nobody in his senses supposes that an encyclopedia had not used earlier works as sources; but it seems to us that he might assume that it has been rewritten, perhaps

throughout. * * * *It was not new in the sense people would understand the word, applied to a book* which came in that guise; even a substantial revision does not make a new work."

But that is not to say that such application of the term "new" is to be made as a rule of thumb without regard to the subject matter affected. It is conceivable that a prospective purchaser of an encyclopedia might believe that one described as "new" was at least completely rewritten and preferably of entirely new material. On the other hand, what would purchasers of "Imdrin", claimed to be a new product, expect to receive. We anticipate that the Trial Examiner would have us believe that a prospective purchaser of "Imdrin" would understand that he was buying something like one of the sulfanilomides or antibiotics or perhaps ACTH or Cortizone. In that connection it should be borne in mind that Respondents' representations as to the newness of their preparation were first made long prior to the time when the general public first became aware of the existence of and claims made for ACTH and Cortizone. As to sulfa and penicillin, it is
164 well known that each of these families of drugs is being added to by others of like kind, at an incredible rate, yet we are not aware of any deception being perpetrated on the unsuspecting public by referring to each as a new discovery,—this despite the fact that the differences in effect between the first and the last discovered may be slight, if, indeed, they exist at all. We repeat: There is really little "new" under the sun. It has been said that "the word 'new' is a relative term." *Mills County* v. *Brown County*, 29 S. W. 650, 651, 87 Tex. 475. A teacher in the public schools has been said to be a "new" teacher within the meaning of an applicable statute despite the fact that she had withdrawn and been re-employed after many years of service. *Taintor* v. *City of Hartford*, 197 A. 173, 123 Conn. 515. It has further been held that "an improved composite food product and making the same may be patented as a 'new' and useful combination of matter." *P. W. Sharpless Co.* v. *Crawford Farms*, C. C. A. N. Y., 287 Fed. 655, 658. And may we remind the Commission, by way of striking illustration of the relative nature of the term "new," of the case of the Holy Scriptures. The canonical books which appeared upon the advent of the Christian era, though now nearly twenty cen-

turies old, are known in group as the New Testament, in contradistinction to the former canonical books, which are known together as the Old Testament.

Since counsel supporting the complaint has heretofore taken refuge in certain vague and dubious decisions holding that when an advertiser represents that his prod-
165 uct is sold "for" a disease or complaint, it can be said that he thereby represents a "cure", *Aronberg* v. *Federal Trade Commission*, 7 Cir., 132 F. 2d 165, 168, citing *U. S.* v. *11¼ Doz. Packages*, D. C. W. D. N. Y. (1941), 40 F. Supp. 208, 210 and *Hall* v. *U. S.*, 5 Cir., 267 Fed. 795, 798, it is to be assumed that the Trial Examiner was similarly persuaded and that that conviction entered into his decision. It should be borne in mind that the product under consideration in the *Aronberg* case, *supra*, was an abortifacient for delayed menstruation. In such case, it is patent that to relieve such condition or accomplish any beneficial effect is to cure it. When applied to a product sold for that purpose, the term "for" can have but one meaning and that "cure." The decision of the court is further fortified by the fact that it is uniformly recognized that there is such a thing as a "cure" for the described condition. It is obvious that use of the term "for" in connection with a named disease or condition need not mean "cure" either where the disease in question, like rheumatism or arthritis, is known generally to be incurable or where it is generally agreed, as here, that the most common treatment is symptomatic and consists in the alleviation of pain. Under such conditions, it is more logical to assume that a preparation sold "for" the "relief of the pains and aches of rheumatism and arthritis" is sold as a palliative. That the courts, in the above cited cases, did not mean to state categorically that any time an advertiser used the word "for" in his advertisement of a drug, he represented that he was selling a "cure" is apparent from the language of the Court in the last named
166 case, *Hall* v. *U. S.*, 5 Cir., 267 Fed. 795, 796, 797, where it was said:

> "Each bottle (of medicine) mentioned was encased by a carton with the following printing or label thereon, to wit: '• • • Hall's Great Discovery, *for* Kidney and Bladder Troubles, Diabetes, Weak and Lame Backs, *Rheumatism* (etc.)' • • • When so read and construed, it amounted to an assertion that the article

> referred to, if used as directed, might be expected to have a curative or *alleviative* effect on the classes of ailments mentioned." (Emphasis supplied.)

It is fair to assume that the Court in the *Aronberg* case, *supra*, was guided by the considerations of this decision which holds that the term "for", used in the connection stated, may connote either a cure or a palliative. The implication is that it is to be treated as a relative term, its meaning dependent upon the context in which it is used. It would seem that when the word "for" was used solely on a label or a simple circular containing a minimum of explanation as to the intended connotation of the term, it is more susceptible of interpretation as meaning "cure" than when, as here, it is repeatedly and particularly referred to as "for the relief of pains."

That rheumatism and arthritis are generally regarded as incurable cannot be doubted. At this point, we must note, and the attention of the Commission is respectfully directed to the fact that Respondents accordingly except to the rejection by the Hearing Examiner of their proposed finding No. 4 that he find that "since the causes of most rheumatism and arthritis are unknown, it is both unnecessary and impossible to remove such causes in order to effect proper treatment. Such treatment is confined to the relief of the symptoms of rheumatism and arthri-
167 tis." Respondents assume that the Hearing Examiner has adopted so much of their proposal as recites that the causes of most of these diseases are unknown, but rejected Respondents' proposal that on that account it is both unnecessary and impossible to remove those causes. That conclusion, to us, seems axiomatic. Similarly, it is assumed that the Examiner rejected Respondents' proposal that on this account, treatment is confined to the relief of symptoms of such diseases. Respondents submit that there is no evidence in the record to sustain any such rejection, but there is abundant evidence to sustain the proposal itself.

It seems well agreed by all the eminent physicians who testified at the various hearings that there is no known cure for the common primary type of arthritis. Dr. Seymour Weisberg so testified (Tr. 580). He further testified (Tr. 619) "* * * it is not always possible" to correct the underlying causes of the pathological changes occurring in certain forms of rheumatism and arthritis. Further, Dr.

Weisberg testified (Tr. 580) "It is not uncommon, as a matter of fact, to treat a condition without knowing the primary cause." He further testified that salicylate therapy for the alleviation of the pains of rheumatism and arthritis, whether or not it will remove the cause of such a disease, can be said to be an effective treatment or remedy for that disease.

Similarly, Dr. Arnold Black, testifying for respondents, said that when he gave or dispensed salicylates for rheumatism or arthritis he would call that a treatment (Tr. 645), and that "The approach to the treatment of a great many diseases these days is not an approach to the
168 etiology because we do not know the etiology. It is frequently symptomatic" (Tr. 655).

Dr. Ralph Wolpaw, testifying for the Commission, said: "Any pain or ache will be classified as rheumatism in many cases" (Tr. 477); that osteo-arthritis is a normal aging process (Tr. 527); he further stated (Tr. 529) that "patients coming in aren't too interested in causes, they are primarily interested in getting relief, so that we have to direct our efforts toward that."

Also Dr. Evan M. Barton, for the Commission, testified that pain was the cardinal symptom in each and every form of rheumatism and arthritis (Tr. 353); that the alleviation of pain is important (Tr. 339); also that relief "is effective when the pain goes away" (Tr. 344).

It further appears from the record that with the decrease of pain and suffering will come increased mobility and subsidence of redness and swelling. Dr. Weisberg testified (Tr. 579) that "when pain subsides there is a diminution of redness and swelling"; that "it is obvious that when there is a decrease in the pain the joint, if it is the joint which is affected, becomes more mobile. There is less disinclination on the part of the patient to move that part" (Tr. 579); that "as a matter of fact, prolonged immobility in a particular position is apt to cause a chronic deformity of the particular joint" (Tr. 623); that "one ordinarily requests the patient to put the joint through the range of motion which does not elicit pain" (Tr. 624).

Dr. Wm. Dodd Robinson, for the Commission, admitted that salicylates could be considered, to a variable de-
169 gree, an adequate treatment for stiffness of rheumatism and arthritis, the causes of which are unknown (Tr. 1091); that salicylates will have an effect on the pains of gout (Tr. 1095); that "the use of salicylates under those

circumstances may permit increased mobility due to relief of pain" (Tr. 1122); and that "in general mobility is certainly good" (Tr. 1122); that "motion is desirable to maintain muscle tone and to maintain nerve control, maintain muscle strength so that if and when the inflammatory processes subsides the functional condition of the joint will be preserved. There are additional theoretical reasons that apply in various types of arthritis * * *" (Tr. 1143, 1144).

Similarly, Dr. L. Maxwell Lockie testified that: "I feel that salicylates, through its action in the thymus, will make a person less conscious of the primary cause, and under those circumstances it may decrease the stiffness as a symptom" (Tr. 1169); and that in mild cases of rheumatism and arthritis mobility is desirable (Tr. 1193).

Dr. Black testified that in "rheumatoid arthritis, and if there is some relief from pain by the administration of salicylates which there practically always is, there will usually be an associated reduction in the muscle spasm and there may be some relief of the inflammation" (Tr. 646); that "there is increase in mobility except where ankylosis has existed previously;" (Tr. 646) that with respect to the removal of the cause in order to correct
170 inflammatory pathological changes "you can't remove the cause because you don't know what it is, you don't know what the cause of rheumatoid arthritis is;" however, that one can alleviate those inflammatory changes somewhat (Tr. 656).

It seems obvious, therefore, that Dr. Weisberg was correct when he testified that:

> "Very frequently the doctor, particularly when he is confronted by a disease for which there is no known cure, is compelled to resort to what is known as symptomatic treatment. He offers medication which provides relief from the discomfort caused by the disorder and he hopes—fortunately most of the time he is right—that sooner or later the natural restorative processes will correct the underlying condition." (Tr. 634)

Further, we cannot agree with the Hearing Examiner in his conclusion that Respondents' picturization in their advertising of an anatomical chart, accompanied by the statement, "Where Rheumatism Strikes And How To Detect It" logically warrants *any* inference, much less com-

pe[illegible] that presumption that "Imdrin" is offered as a treatment (in the sense of a "cure") for rheumatic and arthritic conditions. It is more logical to assume that a reader would interpret such picturization and language as a suggestion that if he has pains in the regions depicted, he *may* have a form of rheumatism. It does not reasonably follow that any drug advertised in connection with the disease will be understood to offer a "cure" for that disease. After all, it is commonly known and indisputable that people do commonly treat a large variety of diseases and conditions known or supposed to be incurable. In her testimony
171 otherwise quoted in this Brief, Respondents' witness Mrs. Ingeborg Larson did volunteer (Tr. 810) that:

> "A. It ("Imdrin") gave me relief.
> "Q. It gave you relief?
> "A. Well, I don't expect a cure because all the doctors that I have been talking to say there is no cure."

Neither can Respondents appreciate by what logical process the Hearing Examiner concludes in Paragraph Four of his Initial Decision that if Respondents represent in their advertising that persons who had suffered from rheumatism and arthritis had been enabled, upon taking "Imdrin", to "live happy, comfortable lives once again," importing that such statements may be truthfully made, it follows that Respondents thereby represent that their preparation is an effective medication (other than as a palliative) for rheumatism and arthritis.

As heretofore recited, Respondents know that the job of drawing *reasonable* inferences from the admitted facts is for the Commission. It is also clear that the Trial Examiner and the Commission may choose between two reasonable inferences, *Allied Paper Mills* v. *Federal Trade Commission*, 7 Cir., 168 F. 2d 600 (1948), just as a court may do where it must find the facts. But it does not follow from that proposition that the Trial Examiner may either choose between *unreasonable* inferences or adopt an *unreasonable* inference in preference to a *reasonable* or *more reasonable* one. In the *Allied Paper Mills* case, *supra*, Judge Minton stated at page 605 of the opinion:

172 "In view of this, we cannot sustain the petitioners' contention that where two contradictory and *reasonable* inferences may be drawn from the same evidence, the *reasonable* inference of guilt found by the Commis-

sion is not supported by substantial evidence. *If the Commission's inference from the facts is reasonable,* our inquiry ceases." (Emphasis supplied.)

The inescapable conclusion is that in any case where the inference is not secure in reason and logic, but is the result of guess, conjecture, or speculation, it cannot be allowed to stand.

While the determination of what is and what is not reasonable is also a process lacking mathematical precision, it can be aided by the application of the principles applicable to the syllogistic process as well as by the law applicable to the determination of relevancy.

Tested by the foregoing considerations, we find, that the deductive mental processes in which the Hearing Examiner must have indulged would have included the following:

1. The examiner starts with the assumption that most sufferers from rheumatism and arthritis hope to be cured.

2. He then infers that because such persons hope to be cured, they believe there may be a cure for the diseases in question.

3. He further infers that because such persons may believe there may be a cure for rheumatism and arthritis, it follows that they may believe there may be a cure for the particular kind of rheumatism and arthritis with which such person may be afflicted.

4. The examiner next infers that because sufferers may believe the foregoing, they believe there may be a medicine which will alone effect such a cure.

173 5. The examiner next infers that because sufferers from rheumatism and arthritis may believe that there is a medicine that may cure those diseases, they may believe that any medicine advertised in connection with the disease may effect such a cure.

6. He next infers that since sufferers from rheumatism and arthritis may believe that any medicine advertised in connection with those diseases may offer to cure them, those sufferers will not read the advertisements in question or will not understand the true, literal meaning of those advertisements.

7. Finally, he infers that because sufferers from rheumatism and arthritis generally will not read the advertisements or, having read them, will fail to understand them, they will not read or understand Respondents' particular advertisements.

Professor Morgan, in his book *Cases and Materials on Evidence*, 2nd Edition, (1951) page 122 states:

> "Obviously the value of item (1) as probative of conclusion (6) varies inversely with the number and dubiousness of the intervening inferences."

That each of the foregoing premises is fallacious, dubious or improbable goes without saying. Many are absurd or ridiculous. If it be true that sufferers from these diseases hope to be cured, which seems a reasonable assumption, it does not follow with any degree of assurance that any appreciable number of such persons, particularly those who have attempted to treat the disease for any appreciable length of time, would believe a cure possible. Many patients, like their doctors, understand that, since the causes of most rheumatism and arthritis are unknown, there can be no cure for those conditions except perhaps in the very
174 small number of cases of "infectious" arthritis, all of which would likely be under the care of a physician for the specific diseases involved, as in the cases of tuberculosis, syphilis and the like. Beyond this, the next premise assumes that if a prospective purchaser believes there may be a cure for rheumatism and arthritis, he believes there may be a cure for every kind of those diseases including the kind with which he is afflicted. This completely ignores the fact that the public generally have seen science make remarkable strides in curing certain diseases, but not all diseases, and certain kinds of particular diseases, but not all of them. Again, there is no good reason to believe that the purchasing public is gullible enough to suppose that all diseases susceptible of cure can be cured by drugs alone. It is common knowledge that cure or arrest of cancer may require surgery, radiation or other treatment. If the prospective purchaser has ever used other drugs, he is naturally skeptical of any claims to cure. Perhaps the most fallacious assumption is that the prospective reader will not read or understand the true import of the advertisement in question. Experience shows that sufferers read and digest every line of the largest advertisements. If such were not the case, there would be no cause for concern on the part of the Commission as to what those ads could do. To assume that in this day and age the reading public is substantially ignorant and credulous rather than literate and skeptical is certainly an unwarranted assumption completely opposed to commonly known facts. The language

of the advertisements is plain and its reasonable connotation simple. It seems clear that the premises are too
175 numerous, uncertain or clearly fallacious to warrant the purely conjectural finding of the Hearing Examiner that it is logical or reasonable to infer that Respondents' representations concerning "Imdrin" would be understood by readers to promise a cure for rheumatism or arthritis. We believe the likelihood is logically otherwise and that position is supported by the results of an actual canvas of such persons. It therefore follows, as Lord Chief Justice Holt pointed out in *Coggs* v. *Bernard*, King's Bench, 2 Ld. Raym. 909 (1703): "So that there is neither sufficient reason nor authority to support the opinion."

176 4. The Weight of Probative Evidence Shows That Respondents' Representations Concerning "Imdrin" Are True, Real, Factual and Substantial.

In his Initial Decision, the Hearing Examiner refused to find that the use of "Imdrin" as directed has relieved and will relieve the pains, suffering, inflammation, stiffness and redness of persons afflicted with rheumatism and arthritis, and has enabled them to resume their normal life, as requested by Respondents in their proposed finding No. 9, but, on the contrary, found that "Imdrin", however taken, will not ameliorate the aches, pains and discomforts of any arthritic or rheumatic condition to any extent beyond the temporary and partial relief thereof; that "Imdrin" will have no significant effect upon severe aches, pains and discomforts, and will afford temporary and partial relief of only minor aches and pains; also that "Imdrin" cannot be depended upon to have any effect whatever upon the symptoms accompanying any arthritic or rheumatic condition.

More impressive than any theory advanced by the Commission's medical witnesses, none of whom had ever used or prescribed "Imdrin", as to its efficacy in alleviating the pains and other symptoms of rheumatism and arthri-
177 tis, is the testimony in the record of the actual experiences of fourteen live users of the product (Tr. 761 to 823, 844 to 867, 868 to 946 and 987 to 1021). Each of these disinterested persons testified enthusiastically to the excellent results he or she had experienced from his or her use of "Imdrin".

These sufferers from rheumatism and arthritis included Peter J. Maretta, Mrs. Rhoda Lipsie, Mrs. Ida Klaus, Mrs.

Ingeborg Larson, King Hayes, Arthur Fremault, Louis Jacobs, E. H. Carr, Olive Mae Carr, Katherine Gott, Bernard Vinissky, Mrs. Marjorie Johnson Marchena, Mrs. Betty Raaberg and Robert S. Greenfield.

Each was examined by a physician who diagnosed his or her ailment as some form of rheumatism or arthritis (Tr. 823 to 844), (Tr. 946 to 985) and (Tr. 1021 to 1070), or it was stipulated by counsel that such was the case (Tr. 871, 923 and 1068). It was stipulated that Louis Jacobs of Cleveland, Ohio who testified in this cause had been a patient of Dr. Wolpaw who had previously testified for the Commission, and that Dr. Wolpaw had diagnosed Mr. Jacobs' case as gouty arthritis (Tr. 871); similarly, it was agreed by counsel that Bernard Vinissky of Chicago, Illinois had been a patient of Dr. Rosenberg, a Commission witness, and that Dr. Rosenberg had diagnosed Mr. Vinissky's condition as gouty arthritis (Tr. 923). Dr. Edward B. Miller of New York, appearing for respondents, testified that he had examined Mrs. Marjorie Johnson Marchena, Mrs. Betty Raaberg and Robert S. Greenfield (Tr. 1025). He found Mrs. Marchena to have a condition
178 "which we call a degenerative arthritis" or "osteoarthritis" (Tr. 1031); that Mrs. Raaberg "represents the same disease" but "a little more advanced form" (Tr. 1039); that as to Mr. Greenfield, he had bursitis (Tr. 1045) and neuritis (Tr. 1047). Since counsel for the Commission has seen fit to question the adequacy of certain diagnoses made by respondents' witness Dr. Weisberg, as will hereinafter appear, to the extent of holding two hearings designed to adduce rebuttal evidence with respect thereto, and has wholly failed on such occasions to attack the adequacy of Dr. Miller's diagnoses, it is to be assumed that Counsel is either satisfied with those diagnoses or recognizes his inability to discredit Dr. Miller in that behalf.

The balance of the sufferers from rheumatism or arthritis who testified for respondents were first examined by Dr. Weisberg, who diagnosed the case of each. Dr. Weisberg testified that Peter Maretta had muscular rheumatism or fibrositis (Tr. 826); that Rhoda Lipsie had hypertrophic arthritis (Tr. 827); that Mrs. Ida Klaus had hypertrophic arthritis (Tr. 829); that Mrs. Ingeborg Larson was afflicted with hypertrophic arthritis, similar to the preceding case (Tr. 830 and 831); that King Hayes presented a case of gout (Tr. 833); that he was satisfied that every one of those persons had some form of arthritis (Tr. 838); that Arthur

Fremault suffered from hypertrophic arthritis (Tr. 839); the doctor's diagnosis of the condition of E. H. Carr was that Mr. Carr had hypertrophic arthritis, subdeltoid bursitis or both (Tr. 948); that Olive Mae Carr "was suffer-
179 ing from fibrositis or muscular rheumatism" (Tr. 952); as to Katherine Gott, Dr. Weisberg testified "My diagnosis was arthritis, type undetermined." (Tr. 954). Dr. Weisberg testified that in each instance he made his diagnosis on the basis of the facts apparent in the case of the particular patient involved; that he took into consideration not only the history of the case as related to him by the patient, but such definitely objective findings as crepitus, the presence of Heberden's nodes which are present only in arthritis (Tr. 841 and 842) and the like; that these could be found without x-ray (Tr. 841).

On rebuttal, Dr. Robinson, the Commission's witness, after describing his own practice in diagnosing the cases of patients presumed to be suffering from rheumatism or arthritis with a view to attempting treatment of those patients rather than as preparation for testifying in a law suit, was forced to admit that Dr. Weisberg, as an accredited diplomate in internal medicine was qualified to make adequate diagnoses of rheumatism and arthritis, that the diagnoses Dr. Weisberg made might be right, and that if they were correct, it wouldn't just be the result of an accident. When asked by counsel for respondents (Tr. 1129):

> "Q. Do I understand you to say that Dr. Weisberg might have been right (in his diagnoses) in some of these cases? Is that what you are saying, in effect?" Doctor Robinson answered:
>
> "A. It is entirely possible that he was right in some of these cases."
>
> "Q. And that it wouldn't be just an accident if he were right?"
>
> "A. Of course not."

180 Again, Dr. Robinson, after being reminded that Dr. Weisberg, like himself, was a diplomate in internal medicine, and asked whether an applicant for such recognition is not required to demonstrate to the Board evidence of his proficiency in diagnostic techniques and (Tr. 1132):

> "Q. Do I understand you to suggest that one might become a Diplomate without certain recognized abilities in the art of diagnosis?" responded
>
> "A. No. I don't want to indicate that."

Doctor Robinson further stated (Tr. 1132):

> "A. I do not think he (Dr. Weisberg) is wrong in nine cases, obviously. However, I think it depends very much on what you mean by diagnosis, sir."

Doctor Robinson then sought to distinguish between what he called a "clinical impression" and a "diagnosis" and testified further as follows (Tr. 1134):

> "Q. Am I correct in stating then that you called something you described an adequate diagnosis and something else an impression gained by a doctor? That is you defined one thing as an adequate diagnosis and another which you called a doctor's impression.
>
> "A. A clinical impression.
>
> "Q. Is it not a fact that the line of demarcation between various diagnoses and so-called impressions is a hazy one at best, a very nebulous one?
>
> "A. Unfortunately there are fields of medicine where one cannot go much farther than what we call a clinical impression • • •"
>
> "Q. Would you call what you have just described as an impression, a guess? Is that the same thing to your mind?
>
> "A. No."

This impresses respondents as unwarranted hair-splitting. Moreover, Dr. Robinson, when asked if he ever made
181 less than a complete diagnosis of a patient, replied (Tr. 1136 and 1137):

> "Regarding the without going through the complete diagnostic procedure, there are occasional exceptions. For instance, where you have a single finding which may be pathognomic—I mean it occurs in that disease and no other disease—of course, if you find that and make a diagnosis without going through the detailed procedure—(presumably such would be considered adequate diagnosis)".

It should be remembered that Dr. Weisberg had testified to having found such characteristic evidence of arthritis as Heberden's nodes in various of the patients he examined, a condition which does not exist in connection with any other disease. Such would seem, therefore, to fulfill the requirement of Dr. Robinson's exception hereinabove stated. Further, Dr. Weisberg testified (Tr. 957 and 958):

> "You mentioned that it was a brief examination. I'd

like to point out that that doesn't necessarily make it inadequate, not be a great deal, and there were a number of instances when I mentioned quite emphatically that it was my belief that individuals had hypertrophic arthritis. In those cases I feel very strongly that further evidence, the sort adduced by x-rays, would add nothing to the diagnosis. The clinical evidence was so clear-cut that in my mind there would be no doubt whatsoever regarding the nature of the disorder and it is my very distinct impression that the neophyte in the practice of medicine would have been compelled to make a similar diagnosis."

With respect to the particular individuals examined by Dr. Weisberg, he testified that while x-rays, sedimentation rate and urinalysis would be additional evidence, none of these would be necessary to establish a diagnosis in those particular cases (Tr. 959).

It seems unnecessary here to detail the testimony of the various users of "Imdrin". Many of them had pre-
182 viously taken aspirin, Anacin or other drugs without effect, then took "Imdrin" and experienced relief from the pains of rheumatism or arthritis, reduction of swelling, stiffness and redness and were able to move about in their daily routines in a manner before that time impossible.

Louis Jacobs of Cleveland, Ohio, the former patient of Dr. Wolpaw, testified that he took "Imdrin" and further (Tr. 879):

"Q. Did it help you in any way?

"A. Certainly.

"Q. How?

"A. I had no pain and I could walk. I could go places. I came to Chicago, sir, and take the Imdrin away and I won't come to Chicago." Further (Tr. 880):

"A. I told him (Dr. Wolpaw) Imdrin helped me and that it is wonderful."

He testified that aspirin made him sick (Tr. 882).

E. H. Carr testified that he took aspirin before he tried Imdrin, but the aspirin didn't seem to help him (Tr. 903); however, "Imdrin" just relieved me of that excruciating pain. He testified (Tr. 904):

"A. I couldn't raise my arm from the side. My wife had to help me with my coat.

"Q. Was that before you took Imdrin?
"A. Before.
"Q. After you took Imdrin?
"A. Well, it constantly got better and better until I don't have any effect at all.
"Q. What effect did it have in the area of your left thumb on your left hand?
183 "A. It disappeared entirely."

On cross-examination by counsel for the Commission, Mr. Carr further stated (Tr. 906):

"Q. And you got relief from pain, swelling and stiffness?
"A. Oh, yes, very much so."

Olive Mae Carr testified that she had taken aspirin for the pains all over the left side of her body "from the ear all the way down on this arm (Tr. 908 and 909) with no results, but that after taking "Imdrin" the results were "just wonderful". She testified, in part, as follows (Tr. 909):

"Q. Did you have, before you took Imdrin, did you have full mobility, could you move your arm around and your shoulder?
"A. Yes.
"Q. You could?
"A. But it hurt.
"Q. It hurt?
"A. It did.
"Q. After you took Imdrin the pain was eliminated?
"A. It was wonderful.
"Q. Did that happen immediately or over a period of time?
"A. Well, the first week it started to lessen and lessen, and now I don't have it all."

Mrs. Katherine Gott testified that "I took aspirin, anacin, and stuff like that, but they never did any good (for her pains of rheumatism or arthritis)" (Tr. 815). Regarding her use of "Imdrin" she testified (Tr. 916) "It has helped me wonderfully." She particularized:

184 "Before I started taking it my hands were swollen up and I couldn't even bend my fingers down like that. They'd be swollen so badly I couldn't make a fist out

of my hand * * * Now (after taking "Imdrin") I can bend my hands and fingers" and make a fist (Tr. 916).

She further testified that "the pain has lessened a lot." (Tr. 916).

Bernard Vinissky testified that he had doctored at the Mayo Foundation for many years and had been a patient of Dr. Rosenberg, the Commission's witness; that he had been subjected to much salicylate therapy for his gouty arthritis. Mr. Vinissky was asked how he felt after changing from aspirin and taking "Imdrin". He responded (Tr. 939): "The particular pain that impelled me to buy it had disappeared." He further testified:

> "I felt better after taking Imdrin than taking aspirin and with taking a smaller number of Imdrin pills than I was required to take of aspirin." (Tr. 941).

Peter J. Maretta, a user, was similarly asked (Tr. 763):

> "Q. Did you take anything for the pain?
> "A. Imdrin."

Further, he related (Tr. 763):

> "Well, I took three pills for the one day and it eased up my pain. Not only that but when I went to bed it made me sleep better at night and I kept taking them until the pain eased up and when I finished mostly all the bottle I didn't have any more pain. I don't have any more pain. I don't ever have any now * * * (the pain) hasn't come back at all."

Mrs. Rhoda Lipsie testified that she was bothered with a pain in her left hand (Tr. 776); that she took "Imdrin" until she had finished two bottles, at the rate of four tablets a day (Tr. 777). She answered questions of respondent's counsel as follows (Tr. 777):

185 "Q. Will you tell us what effect, if any, it had upon the pain?

"A. Well, it left me. The pain left completely.

"Q. Will you tell us when the pain was completely eliminated?

"A. I ran out of them and I thought I would wait, say, about three or four weeks before I would get more and I noticed I didn't have any pain and so I didn't buy any more for awhile.

"Q. Did you buy some more later?

"A. Yes, I did but I didn't use them four a day. I only took two a day.

"Q. How long did the pain last after you bought your further supply?

"A. Probably,—well shall we say just a couple of months?

"Q. When, specifically, would you say that your pain was completely eliminated?

"A. Six months ago."

On cross-examination, Mrs. Lipsie was asked by counsel supporting the complaint (Tr. 784):

"Q. When did that stiffness in the end joints of the forefinger and the little finger come, when did they come?

"A. At the beginning, it started right away, but it le. up. When I took the pills, (Imdrin), then it stopped, I felt now I could bend my fingers where before I couldn't."

Similarly, Mrs. Ida Klaus testified (Tr. 793):

"A. I came home and I seemed to be getting worse, it was pain, pain, pain my leg got numb all the way down to my ankle, I couldn't walk and that is the way I was suffering and suffering, that is all, and I took shots and pills and got no better.

"Q. What was it that you took in November?

"A. Your pills.

186 "Q. Imdrin?

"A. Yes.

"Q. And how did the pills affect your pain?

"A. It took it away.

On cross-examination, Mrs. Klaus was asked by the attorney for the Commission (Tr. 802):

"Have you ever taken any aspirin for this condition of yours? and she answered:

"Oh, yes, when I had that awful pain I used to take it. I would take a tablet or two and it wouldn't help me." and

"I took quite a few."

Mrs. Ingeborg Larsen testified (Tr. 809) that a friend gave her "Imdrin" and she tried it and it seemed to relieve the pain in her knees (Tr. 807). It is especially note-

worthy that this witness, in her testimony, volunteered spontaneously that (Tr. 810):

"A. It gave me relief.
"Q. It gave you relief?
"A. Well, I don't expect a cure because all the doctors that I have been talking to say there is no cure."

King Hayes, another user, testified for respondents (Tr. 848):

"Q. Before you used Imdrin did you have pain in your feet?
"A. Before I used it?
"Q. Yes.
"A. Sure I would have pain in my feet.
"Q. What did it do with regard to the pain, if anything?
187 "A. It took the pain and swelling out.
"Q. Then you went back to work? (Tr. 849)
"A. Yes.
"Q. During this time (before taking Imdrin) you had been unable to work, is that right?
"A. Oh, sure."

Arthur Fremault testified for respondents that he had had pains in the lower back, the full lower back (Tr. 856): that after taking Imdrin, he had said: (Tr. 858)

"'It's wonderful. You are advertising your medicine. It is wonderful. I have got no pain any more.' Yes, it is gone."

Marjorie Johnson Marchena, for respondents, said (Tr. 987): "I had muscular pains in my body * * * In my shoulders, in my arms, hands and my lower limbs." She testified that neither a liquid medicine nor capsules prescribed by her physician provided any relief (Tr. 988). She further testified that about a week after she commenced taking "Imdrin", six a day, she noticed that her pains were diminished (Tr. 990); that she used six tablets a day for about three weeks "To the time that I really felt relief and found out the swelling from my limbs were disappearing. The swelling was in the feet and knees and also the hands (Tr. 991). She stated (Tr. 992) that "My pains were all gone. And the swelling; yes." She did not move from her basement apartment until 1950, but her

pains were relieved and her swelling reduced three weeks after she commenced taking "Imdrin" (Tr. 995) about March, 1949 (Tr. 993). She testified that she had previously taken Dolcin and Anacin without effect; that she was an ordained Methodist minister (Tr. 1003).

188 Mrs. Betty Raaberg testified that "I couldn't go down the stairs and bend the knee here" * * * "I had such terrible pains. (Tr. 1005); that "While I lie in my bed before I took the Imdrin, I couldn't have any blankets to touch my knee (Tr. 1006) but that "Then before supper I took two ("Imdrin") again, and that was the first night for a long time I could have the blankets—"(Tr. 1006). She said that she used the blanket without pain "even the first night." She was then asked:

> "Q. How long after that first day that you used Imdrin were you able to get downstairs where you previously were unable to?" and she answered
>
> "A. I would say two days."

She testified further that she had tried aspirin. "They don't help me" (Tr. 1008)

As to Robert S. Greenfield, the last user witness scheduled to testify in the New York hearings, it was stipulated by counsel that if called, Mr. Greenfield would testify stating the history which he gave to Dr. Miller who examined him and which Dr. Miller had previously testified to in these hearings, including Mr. Greenfield's aches and pains and conditions, the time and manner and use of "Imdrin" and the description of his condition thereafter (Tr. 1068). Regarding the testimony so incorporated in the record, Dr. Miller had testified that Mr. Greenfield had a pain in his left knee in 1947; that he couldn't go to the movies, drive his car or sit anywhere for any length of time; that a year and a half after the onset of the pain, he took Imdrin as directed and in 48 hours had relief, slept through the night after taking the medication for two days, and

189 that his relief was complete after he had taken 100 tablets (Tr. 1040, 1041 and 1042); that three to four months ago, he developed left shoulder pain which a physician diagnosed as bursitis; that two months later he started Imdrin and after a few days of taking the drug, he was much improved (Tr. 1043). Dr. Miller's diagnoses of bursitis and neuritis have already been mentioned on page 21 of these proposed findings.

These Respondents except to the findings of the Hearing Examiner contained in said Paragraph Nine of his Initial Decision, that persons forced by rheumatism or arthritis to discontinue their normal habits of life or their regular occupations, will not be enabled to taking the drug preparation "Imdrin" to resume such habits or occupations. Nearly every one of the users of "Imdrin" to whose testimony the Commission was hereinabove referred, testified specifically that before taking the product he had been unable to pursue his or her regular business or occupation or had been unable to continue his normal habits of life. Many of these witnesses stated that they could not work, could not walk down stairs, could not sit or lie comfortably in bed and could not travel until they had taken "Imdrin."

But beyond the matter of the admissibility of this evidence of real, live users of "Imdrin" who testified, to one accord, as to the beneficial effects of the product, in their several experiences with its use, lies the question of the relative weight to be ascribed to this testimonial evidence. It cannot be denied that insofar as capacity to observe is concerned, these matters are completely unlike the opinion evidence offered by the Commission's "experts," in that they are the subject of first hand factual information known and experienced by the sensory perception of the witness himself. As such, they should be most convincing. 190

Respondents recognize that the weight to be given facts and circumstances admitted as well as inferences reasonably to be drawn from them is for the Commission. *Federal Trade Commission* v. *Pacific States Paper Trade Association*, 273 U. S. 52, 63. That the Courts have held that the appraisal of evidence and inferences is for the Commission is well known. *Gulf Oil Corporation* v. *Federal Trade Commission*, 5 Cir., 150 F. 2d 106 (1945). But where the findings of the Commission, *as to facts and inferences*, have been regarded as wrong by the courts, they have never hesitated to reverse such findings. *Kidder Oil Co.* v. *Federal Trade Commission*, 7 Cir., 117 F. 2d 892 (1941), *International Parts Corporation* v. *Federal Trade Commission*, 7 Cir., 133 F. 2d 883 (1943); *Folds* v. *Federal Trade Commission*, 7 Cir., 187 F. 2d 658 (1951) and many others. So the questions of whether or not an expert testifying for the Commission needs clinical experience with the product, before he can testify as to his opinion concerning its

efficiency, such as was raised in *J. E. Todd, Inc.* v. *Federal Trade Commission*, 145 F. 2d 858 and whether or not the Commission may resolve conflicts in the testimony of experts, such as was decided in *Alberty* v. *Federal Trade Commission*, 118 F. 2d 669 are not germane to our present consideration. Our present inquiry is only: What weight *should* the Commission assign to this evidence?

191 At the outset, Respondents believe it can be said that as a general proposition factual evidence should weigh heavier and have more convincing power than opinion evidence. It has been held that "a medical opinion cannot be arbitrarily disregarded, but on the other hand it cannot stand in the face of actual facts to the contrary." 32 Corpus Juris Secundum, p. 397, § 569, *Hamilton* v. *Fay*, 128 A. 837, 283 Pa. 175, *Stewart* v. *Pioneer Pyramid Life Insurance Co.*, 180 S. E. 889, 177 S. C. 132.

It is for that reason, *inter alia*, that Respondents have found it necessary to except to the refusal of the Hearing Examiner to find that pain is completely subjective and is incapable of definition and classification as to degree of pain suffered. It is assumed that the Hearing Examiner so refused to find in accordance with Respondents' proposal, because he regarded the unanimous testimony of all the medical witnesses on both sides that pain is completely subjective (Tr. 241, 240, 345, 348, 534, 579, 580 and 686) as "immaterial". Respondents cannot agree that this proposition is either immaterial or unsupported by substantial evidence. We think it self-evident and most persuasive that if the issue to be determined is whether or not pain is relieved and pain itself is completely subjective, the user will himself know better whether it has been relieved than the physician will know that it couldn't be, and if the layman who takes the medicine says he doesn't hurt any more, it is submitted that he is to be believed and not the doctor who says: "That can't be. You must hurt!"

192 Professor Edmund Morgan, the world renowned authority on Evidence has this to say on the subject in *Cases and Materials on Evidence*, Morgan and McGuire, 2nd Edition (1951), page 131, where in considering the views of Mr. Justice Holmes in *Reeve* v. *Dennett*, 145 Mass. 23, 28, 11 N. E. 938, 943-944 (1887), he recites:

> "(this) was an action for alleged fraud wherein it was material to establish whether or not a compound called

naboli, which D, a dentist, claimed to have invented, reduced the pain of dental operations. D called a number of his patients who testified that operations upon their teeth by D, using naboli, were practically painless, whereas similar operations before had been very painful. * * * If a dozen patients should testify that, when the defendant used his naboli, he filled their teeth without hurting them, and that he hurt them a good deal when he did not use it, supposing the testimony to be believed, and not to be explained by fancy and a general disposition to think well of new nostrums, it would go far toward proving that naboli had some tendency to deaden pain. Indeed, the same thing is true in a less degree, if the painful operations were by another hand."

Again, in *Urbeteit* v. *United States*, 5 Cir., 164 F. 2d 245, 247, 248 (1947), which was a suit to condemn as misbranded a machine invented and sold by Dr. Urbeteit for the diagnosis of certain diseases including arthritis, the Court said:

"Dr. Urbeteit vigorously contended that all he had said in 'The Road to Health' (his brochure) was true. * * * He had 30 of his patients present whom he offered as witnesses to the benefits they had received, many of them being those mentioned in 'The Road to Health'. The Judge refused to hear them, on the ground that being laymen they could not testify what was the matter with them and consequently could not say what they were relieved from and that the diagnoses testified to by Dr. Urbeteit could not be accepted because he rested them on the use of his machine which the Government's witnesses, who were men of high standing in medicine and in the electrical arts, 193 had testified *could not* (emphasis supplied) do what Dr. Urbeteit claimed. These rulings were error. * * * The most eminent physicians and scientists have in the past erred in their *opinions*, and opinions generally must yield to well proven contrary facts."

See also *Standard Oil Co. of New York* v. *Federal Trade Commission* and *Texas Co.* v. *Same*, 2 Cir., 273 Fed. 478, 482 (1921) where it was held that the Commission might not infer that petitioners' system tended toward monopoly

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and constituted unfair competition as against the proved fact that petitioners' system had not restricted competition.

And as was heretofore pointed out earlier in this Brief, it was held in *Gelb* v. *Federal Trade Commission*, 2 Cir., 144 F. 2d 580, 582 that where an expert for the Commission testified to his opinion from analysis of the product that it *could not* "recondition" the hair, where many witnesses affirmatively stated from experience that it *did* and not a single witness who testified from experience in using the preparation *denied that it did* leave the hair "reconditioned" this expert's inference to the contrary, based solely on his chemical analysis, without experience in the use of the preparation cannot be regarded as substantial evidence that the product is incapable of reconditioning the hair.

It is accordingly suggested that the Trial Examiner unrealistically and unfairly mis-evaluated the evidence adduced herein. In electing to be bound by the disputed testimony of the Commission's medical experts, he chose to ignore not only all of Respondents' medical evidence that "Imdrin" could and would relieve the pains of rheumatism and arthritis but also that of real, live users
194 afflicted with these diseases who testified uniformly that they had. He assigns no reason for so doing and his action can be only regarded as arbitrary.

5. The Terms of the Order to Cease and Desist Proposed by the Hearing Examiner in His Initial Decision Are Unjust, Inequitable, Unconscionable and Oppressive and Are Arbitrarily and Completely Unwarranted by the Evidence.

Respondents have excepted to the order to cease and desist proposed by the Hearing Examiner for the general reason, as hereinbefore pointed out that no order to cease and desist is indicated or proper, since Respondents have not made any of the misrepresentations laid to their charge. It is neither usual nor lawful to require persons to cease and desist from doing any act which they are not shown to be doing at the time in the belief that they may do so in the future. It is necessary, first, to show a present violation of the Act. But particularly do Respondents except to the provisions of such proposed order which would require them to cease and desist from representing

to the public that their product "Imdrin" will provide other than temporary and partial relief from minor aches and pains attendant on rheumatism and arthritis.

Respondents, in that behalf, except to the refusal of the Hearing Examiner to find that most cases of rheumatism and arthritis are ambulatory and mild. (Tr. 240, 647, 654, 663, 706, 1142, 1195, 1207, 516 and 526). We cannot
195 agree with the observation of the Hearing Examiner that this proposal is indeterminable. We believe the evidence without question bears out this fact. Its significance lies in a realization of the fact that Respondents' advertisements are directed mainly to this group of people, most of whom would be suffering from what the Hearing Examiner characterizes as such minor aches and pains and would expect only temporary relief from those symptoms.

However, as was pointed out in the case of D. D. D. Corporation *vs.* Federal Trade Commission, supra, to require Respondents to particularize in their advertising, in manner as the Hearing Examiner proposes, would be unduly oppressive and unnecessarily explicit. It was not intended by the framers of the Federal Trade Commission Act that its operation be to put producers out of business or unduly to hamper them in the legitimate exercise thereof.

Conclusion.

The Commission is respectfully reminded that there has not been a scintilla of evidence to show that the purchasing public has been defrauded or injured by "Imdrin" advertising. On the contrary, it has done untold good. It is a serious matter to deprive Respondents of their rights legitimately to advertise, which would be the inescapable result
of approval of the Hearing Examiner's findings and
196 order by the Commission. Accordingly, Respondents respectfully request that the Hearing Examiner be reversed.

Respectfully submitted,
Frank E. Gettleman,
Arthur Gettleman,
Edward Brodkey,
Attorneys for Respondents.

Chicago, Illinois, February 21, 1952.

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197 (Letterhead of Frank E. & Arthur Gettleman,
Chicago 3, Illinois.)

REQUEST FOR ORAL ARGUMENT.

(Received Federal Trade Commission Feb 27 1952
Secretary.)

February 21, 1952

Federal Trade Commission
Washington 25, D. C.

Attention: Mr. D. C. Daniel, Secretary

Re: Docket No. 5691
Rhodes Pharmacal Company, Inc., et al.

Gentlemen:

Enclosed please find twenty copies of Respondents' Brief, constituting their appeal from the Initial Decision of the Hearing Examiner filed herein, pursuant to Rule XXIII of the Rules of Practice of the Federal Trade Commission.

Kindly file these Briefs, the original of which is signed, in our behalf, and advise us of the date on which this matter is set for oral argument.

Thanking you for all past courtesies, we are

Yours very truly,
Frank E. & Arthur Gettleman,
By Edward Brodkey.

EB:rj
encs.

198 UNITED STATES OF AMERICA.

BEFORE FEDERAL TRADE COMMISSION.

* * (Caption—5691) * *

MOTION FOR EXTENSION OF TIME WITHIN WHICH TO FILE OPPOSING BRIEF.

(Received Mar. 7 1952 Secretary.)

Comes Joseph Callaway, counsel supporting the complaint, and moves for extension of time from March 18, 1952, to April 18, 1952, within which to file opposing brief, and for reason says:

Other Commission matters assigned to counsel, many of them with instructions to expedite their handling, have prevented his doing any work on the opposing brief to date. The mimeographing section advises that approximately 10 days or 2 weeks will be required to mimeograph the brief after it is prepared and typed. In preparation of the opposing brief, a thorough review of the record including approximately 1200 pages of technical testimony is necessary. It is, therefore, believed that to properly prepare opposing brief, have it typed and mimeographed will require the extension of time requested.

Respectfully submitted,
Joseph Callaway,
Counsel supporting the Complaint.

March 7, 1952.

Approved:
William M. King,
Assistant Chief,
Division of Litigation.

199 UNITED STATES OF AMERICA.

BEFORE FEDERAL TRADE COMMISSION.

Commissioners:

James M. Mead, Chairman,
Lowell B. Mason,
John Carson,
Stephen J. Spingarn.

* * (Caption—5691) * *

ORDER EXTENDING TIME FOR FILING OPPOSING BRIEF IN SUPPORT OF THE ALLEGATIONS OF THE COMPLAINT.

This matter coming before the Commission upon the motion of counsel supporting the complaint for an extension of time from March 18, 1952, to April 18, 1952, within which to file opposing briefs in support of the allegations of the complaint, and the Commission having duly considered the said motion and the record herein, and being now fully advised in the premises;

It Is Ordered that the time within which opposing brief may be filed in support of the allegations of the complaint be, and the same hereby is, extended from March 18, 1952, to April 18, 1952.

By the Commission.

D. C. Daniel,
Secretary.

(Seal)

Issued: March 17, 1952.

202 UNITED STATES OF AMERICA.

BEFORE FEDERAL TRADE COMMISSION.

• • (Caption—5691) • •

OPPOSING BRIEF.

(Received Apr. 11, 1952. Secretary.)

I. Statement.

This proceeding involves the dissemination of advertising of a medicinal preparation called Imdrin, alleged in the complaint and found by the hearing examiner to be false and deceptive and in violation of section 12 of the Federal Trade Commission Act. The corporate setup and its control by the individual respondents is admitted. Dissemination of the questioned advertising as, and for the purposes alleged in the complaint is admitted. The formula and directions for use of the preparation and its sale and distribution as alleged in the complaint are admitted. Thus the issues before the Commission are narrowed to 2 points. (1) What does respondent represent by the admitted advertising? (2) What is the therapeutic effect of respondents' preparation?

II. Argument.

The argument made in the appeal brief is based upon 5 points which are as follows:

1. Each and every finding of the trial examiner must be supported by substantial evidence, which is substantial in a legal sense.
2. There must be a basis in substantial evidence for the findings of the trial examiner underlying each issue in the case.
3. There is no substantial evidence in the record which will reasonably support the finding of the trial examiner that respondents' advertising complained of means that "Imdrin" is a newly discovered drug, that it possesses therapeutic properties curative of rheumatic and arthritic conditions, that it is offered as a treatment for same and that it is not offered only as

an analgesic and antipyretic for the alleviation of the pains of rheumatism and arthritis.

203 4. The weight of probative evidence shows that respondents' representations concerning "Imdrin" are true, real, factual and substantial.

5. The terms of the order to cease and desist, proposed by the hearing examiner in his initial decision are unjust, inequitable, unconcsionable and oppressive and are arbitrarily and completely unwarranted by the evidence.

Counsel supporting the complaint has no quarrel with the first two points set up by respondents, as general statements of law applicable to the decision of Commission cases in the Circuit Courts of Appeal. In proceedings before the Commission the true rule is understood to be that the findings on which an order is based must be supported by a preponderance of the credible evidence. With a similar change in the rule, the last three points in respondents' brief will be answered in the order presented by respondents.

A. The Hearing Examiner's Findings as to Respondents' Representations Made Directly and By Implication Through the Advertising in Evidence Are Supported By a Preponderance of the Credible Evidence.

The hearing examiner's findings attacked by respondents under point 3 of their brief are as follows:

It is found that through the above-quoted advertisements and others similar thereto, respondents have represented, directly and by implication, as follows:

1. That the drug preparation "Imdrin" when taken as directed, constitutes an adequate, effective and reliable treatment for, and will arrest the progress and correct the underlying causes of all forms of rheumatism and arthritis, including neuritis, sciatica, neuralgia, gout, fibrositis and bursitis, and that said preparation will cure all forms of such diseases or afflictions;

2. That the drug preparation "Imdrin," when taken as directed, constitutes an adequate, effective and reliable treatment for the symptoms and manifestations of all of the above-named diseases or afflictions, and will afford complete, permanent relief from the aches, pains and discomforts thereof;

3. That the drug preparation "Imdrin" is a remarkable, amazing, sensational, new discovery of scientific research;

4. That by taking the drug preparation "Imdrin" as directed, persons suffering from any or all of the above-named diseases or afflictions will be enabled to resume their normal habits of life, and their regular occupations;

5. That the taking of the drug preparation "Imdrin" as directed will correct any disturbance of the vital enzyme systems of the blood and bones, and will insure adequate functioning thereof.

204 It is agreed that respondents have not used the word "cure" in their advertising. However, it is very well recognized that a cure may be represented without use of the word itself, if the overall impression created by the advertising is to that effect. *Donaldson* v. *Reed Magazine Co.*, 333 U. S. 178, 188; *Aronberg* v. *Federal Trade Commission*, 132 F. (2d) 165.

The Hearing Examiner had before him not only the advertisements quoted in the initial decision but all the advertisements in evidence. The ones quoted were merely picked out by the hearing examiner as typical. He also had before him the testimony of Dr. Rosenberg as to what his patients would understand from these advertisements, the testimony of Mr. Brieman as to the result of his survey and the testimony on this point of two of respondents' user witnesses King Hays and E. H. Carr.

Respondents contend on page 20 of their brief that the hearing examiner ignored the testimony of both Dr. Rosenberg and Mr. Brieman in making the findings attacked under point 3 of respondents' brief. They do not object to Dr. Rosenberg's testimony being ignored but state:

> "There is no suggestion in the Initial Decision that the Hearing Examiner has taken Mr. Brieman's testimony and finding into accounts. If it was the intention of the Hearing Examiner to ignore this testimony, respondents, we believe, have a right to know why. It was not contradicted by any other evidence in the record."

It is submitted that the record shows that both Dr. Rosenberg's and Mr. Brieman's testimony was taken into account. Their testimony was a part of the record, and

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the preamble to the initial decision shows that the hearing examiner "having duly considered the record herein, finds that this proceeding is in the interest of the public and makes the following findings as to the facts, conclusion drawn therefrom, and order." (Underscoring mine.)

It is further submitted that the Commission Rules and the Administrative Procedure Act do not contemplate that the hearing examiner shall annotate his initial decision to include a citation to a particular page and line of the testimony for each statement made.

The statement in respondents' brief quoted above that Mr. Brieman's testimony "was not contradicted by any evidence in the record" is also challenged.

1. Mr. Brieman's Testimony.

No witness pointed a finger at any particular statement of Mr. Brieman and said that it was untrue, but the cross-examination of Mr. Brieman revealed:

205 (1) He could not say that the answers he received reflected consumer reaction of the people to whom the Imdrin advertisements were addressed. (R. pp. 740, 741.) This was essential. See *Ford Motor Co.* v. *Federal Trade Commission*, 120 F. (2d) 175, 182;

(2) The questions he asked the persons interviewed, as to the meaning of the advertisements shown them were in effect trick questions in that they were contrary to the actual wording of the advertisements (R. pp. 743-745);

(3) Mr. Brieman's own reaction to the advertising shown those he interviewed was contrary to what he says was the reaction of a majority of those interviewed. (R. pp. 746, 748, 749.);

(4) The photostatic copies of the advertisements exhibited to the persons interviewed did not show the pictures of persons in bed and in wheel chairs as contrasted to those playing golf and bowling, which were shown in the actual advertisements. (R. p. 750.);

(5) Mr. Brieman's report of his interviews was limited in that he did not report the actual statements made by those interviewed but put his own interpretation on what they said, by classifying their answers in only 2 categories, "Pain Relief" and "Cure and Treatment." (R. p. 754.)

Mr. Brieman's report does not show any different shades of meaning in the answers given. For instance, when he asked a person being interviewed if the advertising meant "Pain Relief" that person could very well say "yes" without meaning that pain relief was all the advertisement meant to him, and yet the answer would go in the "Pain Relief" column.

In spite of all these defects in Mr. Brieman's survey and his report of it, he found that to 9% of those interviewed the advertising shown them meant that Imdrin was a treatment and cure for arthritis and rheumatism (R. pp. 731, 732). The record shows that there are 7,000,000 sufferers from arthritis in this country. (R. pp. 731, 732.) Nine per cent of that number is 630,000. If the reaction to the advertisements by prospective purchasers, that is those suffering from some form of arthritis, is similar to those persons interviewed by Mr. Brieman (which has not been shown even under his testimony), 630,000 prospective purchasers would think that respondents' advertisements meant a cure for them. This is quite a sizeable group, a substantial portion of the purchasing public, as alleged in the complaint, who are deceived by respondents' advertising and who deserve protection at the hands of the Federal Trade Commission.

2. The Advertising Considered By Itself.

Commission's Exhibits 12, 15, 16, 17, 18, 19 and 20 bear the heading in large type "Amazing New Discovery for Rheumatism, Arthritis." Mr. Brieman himself testified that if an advertisement said "Amazing New Discov-
206 ery for Diabetes" he would understand that it was an adequate treatment for diabetes (See p. 746 where the question is asked and p. 749 where it is answered). Such understanding of the meaning of this language was supported by Dr. Rosenberg whose testimony will be discussed later. In addition to this, the court has held that the use of the word "for drunkenness" is equivalent to saying that a drug is a "cure, mitigation, treatment or prevention of drunkenness." *U. S.* v. *11¼ Dozen Packages,* 40 F. Supp. 208, 210. A representation that a medicine is "for" or a treatment for is equivalent to labeling it "as a cure or remedy." *Hall* v. *U. S.,* 267 F. 795, 798.

Respondents' advertising sets forth certain symptoms

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as indicating the presence of some form of arthritis. The advertising then says that Imdrin will relieve those symptoms. For instance in Comm. Exs. 12, 15, 16, 17, 18, 19 and 20, in the right-hand column under the heading, "Where Rheumatism Strikes and How to Detect It," the statement is made "All forms (of rheumatism and arthritis) cause pain, frequent swelling, and possible loss of function of joints."

This is only another way of saying that rheumatism in all its forms may be detected by pain, swelling, and stiffness, or loss of function of joints. Then when Commission's Exhibits 2, 3, 4, 5, and 6, say that Imdrin "stops the pain," "causes stiffness and swelling" of arthritic or rheumatic conditions "to disappear, often over night," "prolonged freedom from pain," "for them the aching joints and muscles are a thing of the past," this is only another way of saying that Imdrin will do away with the symptoms which are present in all forms of arthritis and rheumatism and hence cure it.

Commission's Exhibit 13 is addressed in the left-hand column to sufferers from rheumatism, arthritis, neuritis, sciatica, gout, and neuralgia. Sufferers from bursitis and fibrositis are included among those addressed in Commission's Exhibit 37.

Those who have suffered from any form of arthritis for 20 years are promised a "happy comfortable life," and a "more normal active life" (Comm. Exs. 19, 20). The least they could infer from these promises is that the progress of the disease from which they were suffering would be arrested.

Another implication of Imdrin arresting the progress of the disease is contained in the following statement, taken from Commission's Exhibit 37 under the heading "No more Blue Days":

> "In addition, the mental depression that sometimes resulted from therapy in these ailments was not found to be of major significance, when Imdrin was used as indicated. 'Blue days' disappeared and patients resumed their usual cheerful outlook on life. This is of utmost importance, since there seems to be a definite relationship between the onset of arthritis and mental condition." (Underscoring supplied.)

207 In an advertisement addressed to sufferers from arthritic condition, the following, also taken from Commission's Exhibit 37, could only mean that the underlying cause of their condition is an inadequate functioning of the vital enzyme systems of the blood and bones, and that a restoration of such functioning, and therefore a removal of such underlying cause, is promised by the use of Imdrin:

> "For aid in insuring adequate functioning of the vital enzyme systems (biochemical catalysts) of the blood and bones, manganese salicylate and calcium succinate, have been combined with other ingredients for maximum effect."

Other indirect promises of a cure are contained in the two horizontal rows of pictures used in Commission's Exhibit 20 and in other exhibits. Although the subheading above the first row of pictures referred to, only talks about relief of pain and suffering, these pictures of invalids in the first row, followed by the picture of the woman bowling and the man playing golf, are a clear implication that by taking Imdrin, the invalids pictured in the first row were enabled to bowl and play golf. Nor is the implication in any manner offset by the words "Posed for by Professional models" in small type, following the asterisk, further down in the advertisement.

Moreover, the general tenor of the newspaper advertisements, the use of the words as "amazing new discovery," comparison with "wonder-working drugs, Sulfa and Penicillin," statements that Imdrin "works internally toward amazing reduction of pain, heat, redness and swelling in the joints" and that by using Imdrin, sufferers from arthritic conditions can "live happy, comfortable lives again" even though they may have "suffered, waited and hoped for 20 years,"—the tenor of these advertisements is calculated to deceive even those who have had arthritic disorders for a long time, even those who have made the round of various doctors' offices, without being cured, those whose "cases (are) deemed almost hopeless."

Since these advertisements represent that Imdrin will arrest the progress of, remove the underlying cause of, and cure the various kinds of arthritis and rheumatism, the preparation is also certainly represented as an adequate, effective, and reliable treatment for such conditions. It might be possible under some court decisions to represent a preparation as an adequate, effective, and reliable treat-

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ment, without representing it as a cure, but there are no court decisions to the effect that a cure is not an adequate treatment. Such would be an absurdity.

For the Commission to be sure that all the conditions enumerated in the hearing examiner's findings are included in the advertisements, Commission's Exhibit 1 is addressed to sufferers from arthritis, rheumatism, sciatica, and neuritis. Victims of neuritis, sciatica and neuralgia are particularly appealed to in Commission's Exhibit 12. Victims of gout are among those particularly addressed in Commission's Exhibit 13. Victims of bursitis and
208 fibrositis are also appealed to in Commission's Exhibit 37. Of course, all of the advertisements are addressed in general to sufferers from arthritis and rheumatism, without distinction as to kind, and without regard to cause.

From what has been said above, the advertisements themselves justify the first finding of hearing examiner about which respondents complain, that is the finding that respondents have by their advertising represented that Imdrin taken as directed constitutes an adequate effective and reliable treatment for, will arrest the progress and correct the underlying causes of all forms of rheumatism and arthritis, including neuritis, sciatica, neuralgia, gout, fibrositis and bursitis, and that said preparation will cure all forms of such diseases or afflictins.

The same advertising, of itself, justifies the other 4 findings of the hearing examiner as to what respondents have represented by such advertising. At the risk of being repetitious, these will be pointed out, one by one.

The next finding of the hearing examiner to which respondents' object is that through the advertisements in evidence respondents have represented, directly and by implication:

> "2. That the drug preparation 'Imdrin' when taken as directed constitutes an adequate effective and reliable treatment for the symptoms and manifestations of all the above named diseases or afflictions and will afford complete, permanent relief from the aches, pains and discomfort thereof."

First let's consider again what respondents represented to be the symptoms and manifestations of the various kinds of rheumatism and arthritis.

"Where Rheumatism Strikes and How to Detect It.

"Rheumatic and arthritic pain and inflammation

strike any of the areas indicated on the above chart (see Arrows). But these diseases have many forms and symptoms. All forms cause pain, frequent swelling and possible loss of function of joints * * *" (Comm. Exs. 12, 15, 16, 17, 18, 19, and 20).

Commission's Exhibit 2, one of the radio advertisements starts off:

"If the misery of rheumatic and arthritic pains have been driving you to distraction—if you are plagued day after day with tormenting aches, swelling and stiffness * * *" (Underscoring supplied).

Commission's Exhibit 4, another radio advertisment carries out the same theme. We therefore have respondents representing that pain, stiffness and swelling of the joints are the common symptoms of all forms of arthritis and rheumatism. We then have these same radio advertise-
209 ments telling the sufferer that Imdrin "stops the pain," "stiffness and swelling disappear, often over night." (Comm. Exs. 2, 3 and 4). The newspaper advertisements say that Imdrin "works internally toward amazing reduction of pain, heat, redness and swelling. (Comm. Exs. 12, 13, 14, 15, 16, 17, 19 and 20). Commission's Exhibit 37 says 'Imdrin' is a product scientifically designed to aid in the relief of nagging aches, pains, stiffness, and swelling of arthritis and related illnesses * * *. It will be found that Imdrin gives prompt, efficacious and long-lasting relief from the symptoms of the arthritic state, when used as recommended."

Thus we have Commission's Exhibit 37 saying in so many words that Imdrin is an adequate, reliable and effective treatment for the symptoms of arthritis. We also have the other advertisements saying that the common symptoms of all forms of rheumatism and arthritis are pain, stiffness and swelling and that Imdrin is an effective treatment for these symptoms.

Respondents have also, through the advertising in evidence, represented that Imdrin will afford complete and permanent relief from the aches, pains and discomforts of all forms of arthritis and rheumatism. In the phrase "stops the pain," "stop" "means to interrupt or prevent the continuance or occurrence of"; to "cause to cease" according to Webster's New International Dictionary, 2nd

Edition,—not to reduce the pain or to lessen it, but to take it away altogether. If "stiffness, and swelling disappear," as the advertisements say, they are gone, not merely reduced or lessened.

If, for arthritic sufferers, the "aching joints and muscles are a thing of the past," as the advertisements say, they are permanently gone.

> "Remember it is much better to continue taking Imdrin some time after all symptoms have disappeared. This will aid in preventing the recurrence of pains and stiffness.' (Comm. Ex. 37.) (Underscoring supplied.)

If all symptoms have disappeared, that is complete relief and if the recurrence of pains and stiffness are prevented, that is permanent relief.

Respondents do not seem to attack the third or the 4th finding of the hearing examiner as to what they have represented, but attempt to justify the use of the phrase "Remarkable, Amazing, Sensational New Discovery of Scientific Research," and to justify the representation that Imdrin will enable the victim of arthritis to resume their normal habits of life and regular occupations. The attempt to justify these representations will be dealt with later in this brief.

In regard o the 5th finding by the hearing examiner as to what respondents have represented in their advertising, respondents on page 26 of their brief make the following statement:

210 "It is submitted that there is nothing in the record supporting the Hearing Examiner's finding that 'Imdrin' ads represent that the product will correct any disturbance of the vital enzyme systems of the blood and bones."

In answering this statement, it is only necessary to quote from Commission's Exhibit 37 which reads in part as follows:

> "For aid in insuring adequate functioning of the vital enzyme systems of the blood and bones, manganese salicylate and calcium succinate have been scientifically combined with other ingredients for maximum effect."

Thus all of the hearing examiner's findings as to what respondents have represented in regard to Imdrin are justified by the advertisements themselves. However, respondents make the point that where there is other evidence in the record as to the meaning of the advertisements, the Commission is not justified in ignoring it. The other pertinent evidence in the record on this point, not heretofore discussed is the testimony of Dr. Rosenberg and two of respondents' user witnesses King Hays and E. H. Carr.

3. Dr. Rosenberg's Testimony as to What Patients Suffering from the Various Forms of Arthritis Would Understand from Respondents' Advertising.

Dr. Rosenberg was qualified to interpret the meaning of the various advertisements as they would be understood by sufferers from arthritic and rheumatic disorders. The exact course followed in qualifying him to give this testimony was approved in *Stanley Laboratories* v. *Federal Trade Commission*, 138 F. (2nd) 388. See also *Charles of the Ritz* v. *Federal Trade Commission*, 143 F. (2nd) 676. His qualifications as an expert in the treatment of arthritic disorders begin on page 217 of the record and run to the middle of page 238. It portrays the picture of a learned physician the larger part of whose life has been spent in actively treating and daily coming in contact with persons suffering from arthritic and rheumatic disorders. Beginning on page 258 through page 263 he qualifies himself as being in a position, from the contacts, enquiries and discussions with his patients to say what respondents' advertising means to persons suffering from arthritic and rheumatic disorders. His testimony from pages 283 through 312 support the hearing examiner's findings as to what respondents represented through the advertising in evidence.

4. The Testimony of King Hays and E. H. Carr.

The testimony of Mr. King Hays and Mr. E. H. Carr on cross-examination bears out Dr. Rosenberg's interpretation of the advertising. These were two of respondents' user witnesses whose testimony is shown in the record at pages 844 to 845, and pages 902 to 906, respectively. It must be borne in mind that respondents' advertising directed to arthritic sufferers states that "all forms (of rheuma-
211 tism and arthritis) cause pain, frequent swelling and possible loss of function of joints." (Com. Exs. 12, 15,

16, 17, 18, 19 and 20). Other advertisements stated Imdrin "stops the pain," "causes stiffness and swelling" of arthritic or rheumatic conditions "to disappear, often over night." Dr. Weisberg, respondents' expert, said Mr. King Hays had gout which is a form of arthritis (R. p. 833) and that Mr. Carr had hypertrophic arthritis or subdeltoid bursitis, both of which are forms of arthritis (R. p. 948). Mr. Hayes said he had pain, stiffness, and swelling; that if he could find something to take away the pain, stiffness, and swelling, he would think he was cured (R. p. 855). Mr. Carr said the same thing (R. p. 906).

In other words, through the mouths of these witnesses of respondents is confirmation of the fact that representations addressed to rheumatic sufferers that Imdrin "stops the pain," "causes stiffness and swelling to disappear," is a representation of a cure. They had arthritis. They had pain, stiffness, and swelling. They were seeking just what respondents' advertisements promised, and thought if they could get what respondents' advertisements promised, they would be cured.

Thus, the advertisements themselves, the testimony of Dr. Rosenberg and the testimony of Mr. Hays and Mr. Carr supports the finding of the hearing examiner as to what respondents have represented in their advertising. The testimony of Mr. Brieman in regard to his survey does not contradict such finding, because it was not a fair sampling of the reaction of the sufferers from arthritic conditions to respondents' advertising.

B. The Weight of Probative Evidence Shows That Imdrin Will Not Do What Respondents Advertise That It Will Do.

It is believed that the overwhelming evidence in the record on the point supports the hearing examiner's finding that Imdrin taken as directed does not constitute an effective and reliable treatment for, will not arrest the progress of or correct the underlying causes of any form of rheumatism or arthritis including neuritis, sciatica, neuralgia, gout, fibrositis and bursitis and that said preparation will not cure any forms of such diseases or afflictions.

Respondents do not contend that Imdrin will do these things. None of their expert witnesses testified that Imdrin would do these things, and the testimony of Dr. Rosenberg, Dr. Barton, Dr. Wolpaw and Dr. Graef is squarely

to the effect that Imdrin will not. Dr. Rosenberg's testimony on this point is summed up on pages 334 to 336. Dr. Barton's testimony on this point is summed up on pages 430 to 433. Dr. Wolpaw's testimony on this point is summed up on pages 518 to 520. Dr. Graef's testimony on this point is summed up on pages 204 to 208. All of these men were the best possible qualified experts in this particular field.

212 Therefore respondents' appeal from the inhibitions contained in (a) and (b) of the order must stand or fall on the construction or interpretation of the advertising. In this connection, attention is called to paragraph 7 of the findings in the initial decision where the hearing examiner finds what is necessary to provide an adequate effective or reliable treatment for the various types of ailments included under the general terms "arthritis" and "rheumatism." Respondents do not seem to have taken exception to this finding.

Under the 4th point in their brief, which will be answered here, respondents' first attack is that the evidence does not support the finding in paragraph 9 that:

> "The drug preparation 'Imdrin' however taken will not ameliorate the aches, pains and discomforts of any arthritic or rheumatic condition to any extent beyond the temporary and partial relief thereof afforded by its salicylate content as an analgesic and antipyretic. The drug preparation 'Imdrin' however taken will have no significant effect upon severe aches, pains and discomforts accompanying any arthritic or rheumatic condition and will afford temporary and partial relief of only minor aches, pains and discomforts. With the exception of such temporary and partial relief the drug preparation Imdrin cannot be depended upon to have any effect whatever upon the symptoms accompanying any arthritic or rheumatic condition, including neuritis, sciatica, gout, neuralgia, fibrositis or bursitis."

Respondents rely to a large extent upon the testimony of 14 user witnesses. The complaint alleges and the answer admits that respondents' sales for the *last quarter* of 1948 was in excess of $250,000. This is over $1,000,000 annually. There is nothing in the evidence to indicate that respondents' sales of Imdrin have decreased. And yet respondents would have the Commission to overturn the opinion

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evidence of the learned experts in this field by the testimony of these 14 users. If all of the 14 had been suffering from some form of arthritis, which is exceedingly doubtful, and all of them had miraculous recovery after taking Imdrin that would prove nothing. Respondents' own expert Dr. Miller stated that none of the user witnesses he examined had advanced cases, and that except in advanced cases, there were frequently remissions that lasted for months. (R. p. 1054.) The thought is inescapable that it would not be improbable to find 14 cases of arthritis, or many more for that matter, where the taking of Imdrin coincided with a remission, in view of the millions of dollars worth of preparation sold by respondent.

In offering all but one of these 14 witnesses, respondents were confronted with the proposition of having to have some physician examine them after their condition had cleared up, and say that the person had formerly had arthritis. If they had arthritis symptoms at the time they testified, they were not worth anything as witnesses to respondent because they had been taking Imdrin and Imdrin is supposed to clear up such symptoms. If they previously had been suffering from something other than ar-
213 thritis, the fact that their symptoms may have cleared up after taking Imdrin is not a testimonial for Imdrin in relieving arthritis symptoms. The best respondents could make out of the current doctor's examination of the user witnesses was the statement used by Dr. Miller in reference to Mrs. Marchena that he had the impression that she had had mild osteoarthritis (R. p. 1058). Stated another way, the most a doctor could say from examination and history after the condition had cleared up, was as stated by Dr. Robinson, "a clinical impression," (R. p. 1134), that the person examined had formerly had some form of arthritis. Dr. Robinson explained that this was far from an accurate diagnosis.

Respondents on page 59 of their brief cite 32 Corpus Juris Secundum p. 397 and cases in support of the statement that "a medical opinion cannot be arbitrarily disregarded but on the other hand it cannot stand in face of actual facts to the contrary." This statement like other legal citations in respondents' brief is good law, but does not have the application to this proceeding that respondent seek to give it. The actual facts in this case, giving full credit to the sincerety of respondents' lay witnesses, are

that these 14 user witnesses had certain pains and discomforts. After taking Imdrin for a while each of them felt better. It was not an established fact that any of them except Mr. Vissinsky, ever had any form of arthritis, or that the taking of Imdrin was the cause of any of them feeling better. It is an established fact that, even if they all had arthritis, the affliction, particularly during the early stages, is subject to periods of remission, which may well have coincided with their taking Imdrin. Therefore, the actual facts in regard to these 14 user witnesses do not conflict with the expert testimony.

In connection with the testimony of these lay witnesses attention is called to the holding of the Commission in the matter of *Ward J. Miller, trading as Amber-Ita*, reported in 19 F. T. C. Decisions, p. 57. On page 72 in the findings the following statement is made:

> "Respondent introduced the testimony of 13 lay witnesses. Each testified that he or she had been diabetic and had been benefited by taking Amber-Ita. These patients were, in some instances, taking insulin or diet, or both, along with their Amber-Ita; in other instances no control of these patients was exercised; and in still others the alleged diabetic condition was founded on hearsay; that is to say these patients said that some doctor had told them that they had diabetes. If they were taking either insulin or diet or both with their Amber-Ita, its therapeutic value or lack of it could not be determined as either of the former, or both, is proper treatment in diabetes and no one could tell which was responsible for the improvement of these patients, if there was any improvement. The testimony of these lay witnesses is of no probative value."

It is true that the situation differs in the instant case from that in the Amber-Ita case in that these lay witnesses were not allowed to state the disease from which they claimed to have suffered. However, the fact re-
214 mains that none of them had any complaints at the time they were examined by respondents' doctors for the purpose of testifying in this action; that there were no controls over any of them while they were taking Imdrim; that Mrs. Rhoda Lipsie (R. p. 827), Mrs. Ida Klaus (R. p. 829), Mrs. Ingeborg Larson (R. p. 830; Arthur Fremault (R. p. 839), E. H. Carr (R. p. 948) were diagnosed by Dr. Weisberg as having had hypertrophic arthritis

and Mrs. Marchena (R. p. 1031), Mrs. Betty Raaberg (R. p. 1039) were diagnosed by Dr. Miller as having had osteoarthritis, the references to the record being where the doctors' diagnosis of each of these persons appears. The record shows in a number of instances that hypertrophic arthritis, degenerative arthritis and osteoarthritis are all different names for the same thing. If these lay witnesses had osteoarthritis they must have had a mild case since none of them had any complaints at the time they were examined by respondents' doctors. Most of them had not gone to a doctor for their complaints. Dr. Miller testified that in mild cases of osteoarthritis remissions occurred that may last for months (R. p. 1054). Hence in line with the thinking in the Amber-Ita case even if they each had had arthritis, no one could tell what was responsible for an improvement in symptoms reported by these lay witnesses. If they didn't have some form of arthritis, the fact that they took Imdrin and their pains went away is of no value as evidence in this case. All in all it is believed as was said in the Amber-Ita case "the testimony of these lay witnesses is of no probative value."

Respondents recognized that although none of the experts who testified for either side except Dr. Wolpaw and Dr. Lockie had ever had any experience with Imdrin, as such, they were entitled to give their opinion as qualified witnesses based on their general knowledge of medicine. Respondent therefore attacks the weight to be given the testimony of the expert witnesses who testified in support of the allegations of the complaint. Dr. Rosenberg testified that he had seen the formula and directions for use of the preparation (R. p. 309) as did Dr. Barton (R. p. 404) and Dr. Wolpaw (R. p. 496) who also testified that he had had actual experience in treating arthritic and rheumatic patients with Imdrin and observing the results. (R. p. 524.)

It will be observed that all of the expert witnesses supporting the complaint gave their opinion of the effectiveness of Imdrin itself, while respondents' experts, never gave any opinion as to the effectiveness of Imdrin but confined their opinions solely to the effectiveness of the salicylates in Imdrin. Therefore the only opinion evidence as to the effect or lack of effect of Imdrin itself is from the experts supporting the allegations of the complaint. The only time Imdrin was mentioned by any of respondents'

experts was by Dr. Weisberg in an affidavit which is Commission's Exhibit 39. There he says that the salicylates are the most active ingredients in Imdrin and that what he has said in the affidavit in regard to salicylates would be true of Imdrin in view of its salicylate content.

Each of the experts supporting the complaint were familiar with the effects of and had prescribed salicylates for persons suffering from arthritic conditions (Dr. Rosenberg, R. p. 341; Dr. Barton, R. p. 452; Dr. Wolpaw, R. 215 p. 532; Dr. Robinson, R. p. 1108), and salicylates were recognized by experts for both sides as being the active ingredient in Imdrin. It therefore follows that the experts supporting the complaint were not only testifying from their general knowledge of medicine, but also from their long experience with the only ingredients in the preparation claimed by respondent to be effective. Dr. Wolpaw and Dr. Lockie had actual experience with Imdrin (R. pp. 524, 1188, 1189).

If the testimony of the doctors who testified in support of the complaint and those who testified for respondents were diametrically opposed, it is believed that the superior qualifications of the doctors supporting the complaint would cause the evidence to preponderate in support of the findings of the hearing examiner. There is more to it than that, however. When carefully analyzed there is very little conflict in the expert evidence. A careful analysis and comparison of all the expert testimony in the record on the very finding of the hearing examiner being discussed here was made in the proposed findings filed with the hearing examiner by counsel supporting the complaint. This begins on page 17 and ends on page 33. Rather than copy those pages of the proposed findings verbatim, it is desired to incorporate them into this brief by reference.

If respondents' preparation will do nothing more than temporarily and partially relieve the minor pains of arthritic conditions, as was shown by a preponderance of the evidence, it follows that persons forced by such ailments to discontinue their normal habits of life or their regular occupations will not be enabled by taking the drug preparation, Imdrin, to resume such habits or occupations. The record shows that Dr. Barton testified that the temporary partial relief afforded would last anywhere from a few minutes to an hour. (R. p. 451.) This is not disputed by any other expert. Thus the last statement in paragraph 9 of the initial decision is justified.

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Respondents also contend that they were legally justified in using the headlines:

"Amazing New Discovery For Rheumatism, Arthritis, * * *."

"Sensational New Research Discovery."

Their contention is that rheumatism and arthritis are generally regarded as incurable and therefore these headlines would fool no one and are to be regarded as legitimate "puffing." The contention that rheumatism and arthritis are generally regarded as incurable is not accepted and there is nothing in the record to sustain this violent assumption. The record shows many cases are cured and that many cases have remissions in the early stages. If we are going to indulge in assumptions, the assumptions can be made that more folks regard cancer as incurable than regard rheumatism and arthritis as incurable. Yet this Commission can take official notice of the fact that many sufferers from cancer were cruelly deceived by the advertising of Dr. Koch. (In the matter of *Koch Laboratories, Inc., et al.*, D. 4772).

216 Respondent quotes from the case of *Kidder Oil Co. v. Federal Trade Commission*, 117 F. (2d) 892, in support of the statement that the word "Amazing" is mere puffing, but he did not quote far enough. The court further said in that case:

> "We can conceive of situations where the use of such words might be deceptive and even fraudulent. As used by petitioner, however, we are of the opinion that they are nothing more than a form of 'puffing' not calculated to deceive." (Underscoring mine.)

It is submitted tnat here, where such words are used to describe a preparation the effect of which is entirely dependent upon the salicylate content, drugs which have been on the market for many years, is such a case as the court had in mind in the underscored portion of the quotation. The situation in the Kidder Oil Company case was not similar to the instant case. There, respondents had a motor oil that the court found was of more benefit to a motor than other oils because of a new ingredient, graphite.

There have actually been amazing new discoveries and sensational research discoveries in medicine both before and since respondents started advertising Imdrin in this manner. That respondents intended and hoped that their

readers would think Imdrin was in a class with sulfa and penicillin, is evidenced by the same advertisement referring to these drugs:

> "At last the story can be told! Medical science developed the wonder working drugs of Sulfa and Penicillin * * *." (Comm. Ex. 20).

As was said in *Charles of the Ritz Dist. Corp.* v. *Federal Trade Commission,* 143 F. (2d) 676 "The important criterion is the net impression which the advertisement is likely to make." It is submitted that as used and to the audience addressed these headlines carry the message that here is a new discovery that for those afflicted with rheumatism or arthritis is equal to Pasteur's discovery of germs as the source of infection. The actual truth, as revealed by the record, is that the preparation is not any kind of discovery. It is further submitted that such false representation cannot be justified by court decisions, which say that, "amazing," "new" or any other word as used in the case then before the court, is not deceptive.

C. The Order to Cease and Desist.

Respondents contend that the order is arbitrary and oppressive even if supported by a preponderance of the evidence. They contend that the provision of the order which prevents them from representing that Imdrin will do more than provide temporary and partial relief from the minor aches and pains attendant on rheumatism and arthritis, is oppressive for two reasons:

217 (1) They contend that the record shows that most cases are ambulatory and mild, and that respondent's advertising was directed mainly to this group;

(2) They contend that the word "temporary" in prohibition (c) of the order is unjustified as used in view of the court decision in the case of *D. D. D. Corporation* v. *Federal Trade Commission,* 125 F. (2d) 679.

Answering (1) above, even if most cases are ambulatory and mild, respondents' advertising is directed to those who have the worst cases. It is directed to those who suffer torture, agony and unendurable pains (Comm. Ex. 2); to those suffering the savage pains of rheumatism and arthritis (Comm. Ex. 4); to those who suffer the tortures

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of the damned, whose cases are deemed almost hopeless (Comm. Ex. 10); to those whom arthritis has forced to quit their jobs and walk with crutches (Comm. Ex. 12).

As a matter of fact the record does not show that most cases are mild, and the hearing examiner was justified in refusing to make this finding. The record does show there are no statistics on the subject. Dr. Rosenberg agreed that most cases were ambulatory (R. p. 340). He was not asked if they were mild. Dr. Barton drew a distinction between a case being ambulatory and being mild (R. p. 437) and estimated that at one time or another one-half of those suffering from rheumatism and arthritis are under the care of a physician (R. p. 455). Dr. Wolpaw estimated that 10% of those suffering from arthritis and rheumatism are severely crippled, (R. p. 518) that is useless for anything. (R. p. 526). Dr. Weisberg said that the vast number of cases were ambulatory. (R. p. 634). Dr. Black said the majority of cases were ambulatory (R. p. 647). Neither Doctors Wolpaw, Weisberg nor Black were asked if a majority of the cases were mild. Dr. Mayer was not asked if a majority of the cases were either mild or ambulatory. Dr. Arkim was asked if a majority were ambulatory and refused to make an estimate, except in the cases of rheumatic fever. His estimate of rheumatic fever patients was that the majority were bed-ridden. (R. p. 712). Dr. Robinson estimated that the majority of cases of rheumatism and arthritis were ambulant, but refused to say that the majority of cases were mild (R. p. 1142). Dr. Lockie disagreed that a majority of the cases were mild (R. p. 1196). He said that only ⅓ of the cases he saw were ambulant (R. p. 1206).

Respondents' second contention under this heading is that the order should not limit them to representing "temporary" relief because the case of *D. D. D. Corp.* v. *Federal Trade Commission, supra* held that the words "relief from itching" carried no implication that the preparation was a permanent cure for either the symptoms or the disease.

Reference to Shephard's Citations show that this particular holding of the Seventh Circuit Court of Appeals, has been commented upon three times since then by the same Court. *Aronberg* v. *Federal Trade Commission, supra; Sebrone Company* v. *Federal Trade Commission,* 135 F. (2d) 676, 679; *Carter Products, Inc.* v. *Federal*

Trade Commission, 182 F. (2d) 821, 824. In the
218 Aronberg case and the Sebrone case, the doctrine that "relief" carried the implication of "temporary" was rejected, or at least the facts in those cases were distinguished and orders including the word "temporary" were sustained. In the Carter Products case such order was reversed. The D. D. D. Corporation case has been cited many times in opinions in cases from other circuits but never on this particular point so far as the writer has been able to determine.

In the instant case respondents have represented—

> "If these unendurable aches and pains are due to rheumatism, start now using new safe Imdrin for quick relief * * * Imdrin contains a remarkable research discovery! * * * that not only stops pain, helps reduce swelling but acts to uncork the joints" (Comm. Ex. 2). (Underscoring mine).

In the D. D. D. Corp., case the Court agreed with the Commission that the phrase "for quick relief from the itching of eczema blotches, pimples, athletes foot, scales, rashes, etc. is a representation that the product is a remedy for the diseases or ailments thus named. In the same case the court held that "the word 'stop' carries with it an implication that the product is a remedy or cure and affords permanent relief" as used in the advertising statement "Its time to realize the D. D. D. prescription will stop the misery of itching skin in a jiffy!" (Underscoring mine).

In the Aronberg case the product was a preparation advertised to furnish relief from delayed menstruation and respondents cited the holding in the D. D. D. Corporation case in support of their contention that they had the right to use such advertising. The court said:

> "The term relief is not of definite connotation or entirely free from ambiguity; in a common sense it connotates permanent removal of organic or functional disturbance as distinguished from alleviation of discomfort." (Underscoring mine).

In this connection it is pertinent to point out that the record shows that "rheumatoid arthritis is a chronic progressive destructive disease which affects joints and also

affects many other organs of the body." (R. p. 328). Thus, it is an organic disease. Respondents have advertised:

> "All these various forms of arthritis and rheumatism are accompanied by pain; very often swelling and loss of function of the joints." (Comm. Ex. 20, Underscoring mine).

Thus, rheumatism and arthritis are functional diseases, and the court said that the word relief as applied to organic and functional disturbance connotates permanent removal.

219 Further, in the Aronberg case, in construing what has previously been held in the D. D. D. case, the court said this:

> "Furthermore in the cited case the Court carefully distinguished a statement that D. D. D. preparation would offer 'relief from itching' from one 'for quick relief from the itching of eczema, blotches, pimples, athletes foot, scales, rashes, etc.' holding that the latter implied remedial qualities."

If relief "from the itching of eczema, blotches, pimples, etc." implies remedial qualities, it is difficult to understand why "relief from arthritic pain stiffness and swelling" (Comm. Ex. 1) would not imply remedial qualities.

It seems impossible to distinguish the D. D. D. Corporation case from the Aronberg case on any other ground than that eczema, pimples, etc., are not regarded as serious matters, while delayed menstruation is. If this is the distinction intended, the record in this case shows that arthritis is a very, very serious matter. The record contains the testimony of 3 doctors in regard to the terrible consequences that may result if proper treatment is delayed. (Dr. Rosenberg R. p. 257; Dr. Barton, R. p. 400; Dr. Wolpaw R. pp. 490, 491).

In the Sebrone case, supra, the use of the word "relief" was not involved, but the same principle was involved. The Commission had ordered respondent to cease and desist representing that Sebrone had any therapeutic value in the treatment of dandruff in excess of assisting in the temporary removal of dandruff scales and beneficially affecting superficial infections of the scalp sometimes associated with the conditions of dandruff. The court held that the advertising "The treatment is * * * is quick * * * Stop

Dandruff in one week with Sebrone" implied that the preparation afforded permanent rather than temporary relief and sustained the order.

Compare this advertising with the advertising "* * * that not only stops pain, helps to reduce swelling but acts to uncork the joints!" (Comm. Ex. 2).

The Carter Products case, supra, involved an order of the Commission prohibiting respondent from representing that a deodorant "Arrid" would be more than temporarily effective in reducing the flow of perspiration, in keeping the armpits dry or odorless or in preventing the accumulation of odor creating body secretions or excretions in the armpits. Here the court went back to its original objection to word "temporary" in the D. D. D. Corporation case "because of its uncertain meaning," and said:

> "We pointed out that it might mean only a few minutes, yet experts testifying before the Commission admitted that Arrid's deodorant properties are effective at least 3 to 6 hours."

220 In the instant case the evidence on the point is that the temporary effect of Imdrin may be anywhere from a few minutes to an hour. (R. p. 451).

If, in order to meet this objection, respondents want the inhibition of (c) of the order changed to read "* * * in excess of affording temporary partial relief, by each dose Imdrin, of minor aches, pains or fever for approximately one hour," such change would not be objectionable.

III. Conclusion.

Under this heading, respondents remind the Commission that there is no evidence in the record to show that the purchasing public has been defrauded or injured. Such evidence could have been put in the record but no such showing is necessary where the record shows, as it does here, that the advertising has the capacity and tendency to mislead. *Charles of the Ritz Dist. Corp.* v. *Federal Trade Commission, supra,* and cases therein cited. It would have been a waste of the taxpayers money to incur the expense of putting such evidence in the record.

Respondents also conclude that the inescapable result of approval of the initial decision would be to deprive the respondents of their rights to legitimately advertise their

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preparation. Respondent has no legitimate right to advertise falsely or deceptively. It is axiomatic that there can be no vested right in wrong doing. If any citation be needed to support this statement see *Randall* v. *Kreiger*, 23 Wall. 137. The Commission's order "is not bound to chart a course for respondents. They can have no doubt of the evils complained of and sought to be corrected." *Zenith Radio Corp.* v. *Federal Trade Commission*, 143 F. (2nd) 29. We are not here dealing with the excision of a trade name as was involved in the case of *Jacob Seigel* v. *Federal Trade Commission*, 327 U. S. 608. Even in that case the court held:

> "The Commission is the expert body to determine what remedy is necessary to eliminate the unfair or deceptive trade practices which have been disclosed. It has wide latitude for judgment and the Courts will not interfere except where the remedy selected has no reasonable relation to the unlawful practices found to exist."

Here the remedy selected has direct relation to the unlawful practices found to exist.

It is therefore concluded that the order to cease and desist is not any harsher than necessary to correct the evils complained of and sought to be corrected, and should be sustained.

Respectfully submitted,
Joseph Callaway,
Counsel Supporting the Complaints.

Richard P. Whitely,
Director, Bureau of Antideceptive Practices.

221 **REQUEST FOR ORAL ARGUMENT.**

(Received Apr. 21, 1952. Secretary.)

(Letterhead of Frank E. & Arthur Gettleman, Chicago, Ill.)

April 16, 1952

Federal Trade Commission,
Washington 25, D. C.

Attn: Mr. D. C. Daniel, Secretary
Re: Rhodes Pharmacal Co., Inc., et al. Docket No. 5691

Gentlemen:

We are advised by Mr. Joseph Callaway, Trial Attorney for the Commission, that he has filed his brief in opposition the appeal of the above respondents.

Kindly consider this our formal request for oral argument of the above matter before the Commission, at an early date. Will you kindly advise us of the date and hour when this matter may be argued?

Yours very truly,

Frank E. & Arthur Gettleman,
By Edward Brodkey.

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222 UNITED STATES OF AMERICA.

BEFORE FEDERAL TRADE COMMISSION.

• • (Caption—5691) • •

NOTICE OF ORAL ARGUMENT.

You will please take notice that the time and place for oral argument upon appeal of respondents from the initial decision of the hearing examiner has been set for Thursday, May 8, 1952, at 2 p. m., in the Hearing Room, Federal Trade Commission Building, Washington, D. C.

Each side will be allotted not to exceed forty-five minutes.

You may appear and be heard if you so desire.

By direction of the Commission.

D. C. Daniel,
Secretary.

To: Rhodes Pharmacal Company, Inc.,
75 East Wacker Drive,
Chicago, Illinois.

J. Sanford Rose, President,
Rhodes Pharmacal Company, Inc.,
1540 Lake Shore Drive,
Chicago, Illinois.

Jerome H. Rose, Vice-President,
Rhodes Pharmacal Company, Inc.,
975 Fifth Avenue,
New York, New York.

Frank E. & Arthur Gettleman,
10 South LaSalle Street,
Chicago 3, Illinois.

Edward Brodkey,
10 South LaSalle Street,
Chicago 3, Illinois.

Dated: May 1, 1952

223 UNITED STATES OF AMERICA.

BEFORE FEDERAL TRADE COMMISSION.

Commissioners:

James M. Mead, Chairman,
Lowell B. Mason,
John Carson,
Stephen J. Spingarn,
Albert A. Carretta.

• • (Caption—5691) • •

ORDER DENYING APPEAL FROM INITIAL DECISION OF THE HEARING EXAMINER, DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE.

This matter having come on to be heard by the Commission upon respondents' appeal from the initial decision of the hearing examiner, briefs in support of and in opposition to said appeal and oral argument of counsel; and

The Commission, upon consideration of the entire record herein, having decided, for the reasons stated in the written opinion of the Commission which is being issued simultaneously herewith, that all of the findings as to the facts contained in the initial decision are supported by reliable, substantial, and probative evidence of record; that the conclusion contained therein is correct; and that the order to cease and desist therein is proper upon this record and is required to provide proper relief from respondents' illegal practices; and

The Commission, therefore, being of the opinion that respondents' appeal from and exceptions to the hearing examiner's initial decision are of no merit and that said initial decision is appropriate in all respects to dispose of this proceeding:

224 It Is Ordered that the appeal of respondents from the initial decision of the hearing examiner be, and it hereby is, denied.

It Is Further Ordered that the initial decision of the hearing examiner shall on the 3rd day of October, 1952, become the decision of the Commission.

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It Is Further Ordered that respondents, Rhodes Pharmacal Company, Inc., J. Sanford Rose and Jerome H. Rose, shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist contained in said initial decision, a copy of which is attached hereto.

By the Commission, Commissioner Carretta not participating for the reason that oral argument on the merits was heard prior to his appointment to the Commission.

D. C. Daniel,
Secretary.

(Seal)

Issued: October 3, 1952.

Opinion of the Commission is attached.

225 UNITED STATES OF AMERICA.

BEFORE FEDERAL TRADE COMMISSION.

* * (Caption—5691) * *

INITIAL DECISION.

By Abner E. Lipscomb, Hearing Examiner.

(Filed January 11, 1952.)

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on August 17, 1949, issued and subsequently served its complaint in this proceeding upon respondents Rhodes Pharmacal Company, Inc., a corporation, and J. Sanford Rose and Jerome H. Rose, individually and as officers of said corporation, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said Act. After the issuance of said complaint and the filing of respondents' answer thereto, hearings were held at which testimony and other evidence in support of and in opposition to the allegations of said complaint were introduced before the above-named hearing examiner theretofore duly designated by the Commission, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding

regularly came on for final consideration by said hearing examiner on the complaint, the answer thereto, testimony and other evidence, proposed findings as to the facts and conclusions presented by counsel, oral argument not having been requested; and said hearing examiner, having duly considered the record herein, finds that this proceeding is in the interest of the public and makes the following findings as to the facts, conclusion drawn therefrom, and order:

Findings as to the Facts.

Paragraph One: Respondent Rhodes Pharmacal Company, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio, with its principal office and place of business located at 1814 East 40th Street, Cleveland, Ohio.

Respondents J. Sanford Rose and Jerome H. Rose, individuals, are now and at all times mentioned herein have been, respectively, the president, and the vice president and treasurer, of said corporate respondent, Rhodes Pharmacal Company, Inc., with their offices located at the prin-
226 cipal place of business thereof, and are now, and at all times mentioned herein have been, in control of the management, policies, and operation of the said corporate respondent, including the acts, practices and methods herein found.

Paragraph Two: The respondents are now, and for several years last past have been, engaged in the manufacture, sale and distribution in commerce, among and between the various States of the United States and in the District of Columbia, of a certain medicinal preparation designated "Imdrin," which is a "drug" within the meaning of the Federal Trade Commission Act, and for which the formula and directions for use are as follows:

Formula:

Each tablet contains:

Acetylsalicylic acid	1.9	grains
Manganese salicylate	1.5	grains
Calcium succinate (anhydrous)	2.3	grains
Caffeine	.16	grains
Thiamine chloride	1	mg.

Directions:

Two tablets before each meal with water.

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Respondents cause the said product, when sold, to be transported from their place of business in the State of Ohio to purchasers thereof located in other States of the United States and in the District of Columbia. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in the said product in commerce between and among the various States of the United States and in the District of Columbia. Respondents' volume of business in such commerce is substantial, sales for the last quarter of 1948 being in excess of $250,000.00.

Paragraph Three: In the course and conduct of their business, respondents, subsequent to March 21, 1938, have disseminated and caused the dissemination, by the United States mails and by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act, of certain advertisements of the drug preparation "Imdrin," for the purpose of inducing, and which were likely to induce, its purchase. Among such advertisements were radio broadcasts disseminated subsequent to September 1, 1948, by various broadcasting stations, and advertisements published subsequent to September 1, 1948, in various newspapers circulated throughout the United States. Typical of such advertisements are the following:

"Amazing New Discovery for Rheumatism, Arthritis
No Faster Arthritis Pain Relief Known
Safe . . . Hospital Tested
Stops Swelling . Uncorks Joints . Contains
Sensational New Research Discovery

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Picturization of
hand containing
tablet

New, Safe, Scientific Tablet
Not a Narcotic . . . Not Habit Forming . . .

At Last the Story Can Be Told! Science has turned its attention to relieving the agonizing pains of rheumatism and arthritis. The result of extensive research is the remarkable preparation Imdrin. Longtime sufferers from rheumatism, arthritis, neuritis and gout may find Imdrin gives glorious relief amazingly fast. Contains no dope or harmful drugs. Ask for Imdrin at drug stores.

Picturization of
scientist examining
test tubes

Developed after 3 Years of Extensive
Tests in Hospital Clinics

Imdrin has been a closely guarded experimental secret before release for public use. Yes, medical men, after three years of extensive hospital tests, have proved conclusively that Imdrin works internally toward amazing reduction of pain, heat, redness, and swelling in the joints. Every victim of rheumatism, arthritis, neuritis, sciatica, gout, neuralgia, etc., should investigate this new development of modern medicine. Ask for Imdrin at drug stores.

Relieves Pain and Suffering After 20 Years of Torture!

228 *Picturization of man in wheel-chair

'I call Imdrin a miracle and you can understand why when I tell you that the pain which had tortured and crippled me was gone after I had taken Imdrin. Now, for the first time in years, I can move about without pain and enjoy life once again. Surely the thousands of unfortunates like me should be happy to learn about the blessed, fast-acting Imdrin.'

A. C., Chicago, Ill.

*Picturization of old woman invalid

'I had arthritis and rheumatism so bad I could hardly get around. In fact, I went to several doctors who told me that my case was hopeless and that they could do nothing for me. Well, I had about given up hope when I saw your ad in the paper and bought a bottle of Imdrin. I really think it's a wonder. I feel better with every dose I take. It seems like a dream to be free of so much pain.' Mrs. A. R. Webb, 311 N. Bryan St., Amarillo, Texas.

*Picturization of woman apparently suffering

'Even though my daughter is a registered nurse she could not find anything to help her agonizing arthritic pains. She tried everything but nothing did her any good. Then she bought Imdrin and she has had miraculous results. I am going to tell all my friends about the wonderful relief from Imdrin. It really is an amazing remedy.'

Mrs. C. C., Kunkletown, Pa.

•Posed by professional models.

Picturization of anatomical
chart with arrows showing
location of joints and muscles

Where Rheumatism Strikes . . .
And How to Detect It!

Rheumatic and arthritic pain and inflammation strikes any of the indicated areas. (See chart above.) But these diseases have many form and symptoms.

229 All forms of arthritis and rheumatism are accompanied by pain, very often swelling and loss of function of the joints. Hospital test patients receiving Imdrin were able to resume more happy active living once the pain subsided and their confidence grew. Imdrin reduced joint swelling and eased pain rapidly. Imdrin is your greatest hope. Imdrin may give you the same blessed results. Get Imdrin today!

How Imdrin Helps You!

If you have suffered the tortures of rheumatic or arthritic pains, swelling and stiffness . . . if you get up mornings dreading the suffering the day may hold, and do it day after day, month after month, year after year . . . listen! Imdrin may answer your problem of comfortable living. In case after case Imdrin has proved its potency. Imdrin is one of the fastest arthritic and rheumatic pain relievers known to medical science. Cases deemed almost hopeless . . . persons who suffered and waited and hoped for as long as twenty years were able to live happy comfortable lives once again. No other medicament for rheumatism and arthritis can make this amazing statement . . . and back it up with proven hospital and clinical records. Amazing new Imdrin brings new hope of a better life for you . . . and it is as close to you right now as your nearest drug store. Get Imdrin today. Use only as directed. If you don't agree that amazing new, scientific Imdrin is the greatest blessing you've ever discovered, return for your money back. Get Imdrin today—resume comfortable living tonight!

Today—Resume Confident, Pain-Free Living With Amazing New, Safe, and Scientific . . . Imdrin

Imdrin contains no dope or harmful drugs . . . is not habit forming. Hospital tests prove it is one of the fastest pain relievers for arthritic and rheumatic sufferers known to medical science. Start using Imdrin today. Don't miss the chance to enjoy living once again."

No Faster Arthritic Pain Relief or money back

Picturization of bottle of Imdrin

Mail this convenient mail order coupon

(Picture and one additional testimonial omitted.)

Coupon

"Imdrin is a product scientifically designed to aid in the relief of nagging aches, pains, swelling, and stiffness accompanying arthritis and related illnesses, such as certain types of rheumatism, sciatica, bursitis, and neuritis. . . .

230 "For aid in insuring adequate functioning of the vital enzyme systems (biochemical catalysis) of the blood and bones, manganese salicylate and calcium succinate have been scientifically combined with the other ingredients for maximum effect. . . .

"Imdrin is not habit forming—it does not contain narcotics. It is a reliable scientific remedy tested by doctors in famous hospitals, and offered to bring symptomatic relief to sufferers from arthritis, fibrositis, and certain forms of rheumatism, sciatica, and neuritis. To back up its claims, the distributors of Imdrin stand ready to return your money if you do not get the relief you desire. All druggists have Imdrin. Ask for it Today."

Paragraph Four: In the first line of the first above-quoted advertisement, respondents represent the drug preparation "Imdrin" to be an "Amazing New Discovery for Rheumatism, Arthritis," which will "Stop Swelling. Uncork Joints." From the quoted statements considered separately, and from the quoted statements considered in

the light of the entire advertisement, it may reasonably be inferred that the preparation "Imdrin" is a newly discovered drug or substance effective in the treatment of rheumatic and arthritic conditions. To represent that such preparation "stops swelling" and "uncorks joints" is to represent that it possesses therapeutic properties curative of such conditions. Furthermore, the picturization of the anatomical chart, accompanied by the statement, "Where Rheumatism Strikes and How to Detect It," logically warrants the inference that the drug preparation "Imdrin" is offered as a treatment for rheumatic and arthritic conditions.

Although the various advertisements carry such statements as "No faster arthritic pain relief known," "Relief of nagging aches, pains, swelling, and stiffness accompanying arthritic and related illnesses," "One of the fastest arthritic and rheumatic pain relievers known to medical science," and "It is a reliable, scientific remedy tested by doctors in famous hospitals, and offered to bring symptomatic relief to sufferers from arthritis, fibrositis, and certain forms of rheumatism, sciatica and neuritis," such statements, and others similar thereto relating to the relief of the symptoms and manifestations of arthritic and rheumatic conditions, do not qualify or restrict respondents' other, broader representations, nor limit their advertisements to the representation that the drug preparation "Imdrin" is offered only as an analgesic and antipyretic. The offering of said product as a "scientific remedy" implies that its use may effect cures. As used by respondents in their advertisements, the word "remedy" is not sufficiently qualified by any accompanying statement to modify or limit this significance of "cure."

The representation that ". . . Persons who suffered and waited and hoped for as long as twenty years were able to live happy, comfortable lives once again. No other medication for rheumatism and arthritis can make this amazing statement . . . and back it up with proven hospital and clinical records" clearly implies that such statement may truthfully be made with regard to the drug preparation "Imdrin," and, accordingly, that said preparation is an effective medication for rheumatic and arthritic conditions.

231 It is found that through the above-quoted advertisements and others similar thereto, respondents have represented, directly and by implication, as follows:

1. That the drug preparation "Imdrin," when taken as directed, constitutes an adequate, effective and reliable treatment for, and will arrest the progress and correct the underlying causes of all forms of rheumatism and arthritis, including neuritis, sciatica, neuralgia, gout, fibrositis and bursitis, and that said preparation will cure all forms of such diseases or afflictions:

2. That the drug preparation "Imdrin," when taken as directed, constitutes an adequate, effective and reliable treatment for the symptoms and manifestations of all of the above-named diseases or afflictions, and will afford complete, permanent relief from the aches, pains and discomforts thereof;

3. That the drug preparation "Imdrin" is a remarkable, amazing, sensational, new discovery of scientific research;

4. That by taking the drug preparation "Imdrin" as directed, persons suffering from any or all of the above-named diseases or afflictions will be enabled to resume their normal habits of life and their regular occupations;

5. That the taking of the drug preparation "Imdrin" as directed will correct any disturbance of the vital enzyme systems of the blood and bones, and will insure adequate functioning thereof.

Paragraph Five: The terms "arthritis" and "rheumatism" are general terms, sometimes used interchangeably, which refer to any of a number of diseases or pathological conditions including, among others, neuritis, sciatica, neuralgia, gout, fibrositis, bursitis, rheumatoid arthritis, osteoarthritis, rheumatic fever and infectious arthritis, all of which are characterized by one or more of such symptoms or manifestations as pain, stiffness, and inflammatory and destructive changes in the joints and tissues of the body.

The term "neuritis" means inflammation of a nerve, which may be attended by pain, paralysis and degeneration of the nerve substance. This condition is produced by many causes, such as localized infection, creating toxic substances in the system; toxic acidity from the use of various drugs; deprivation of certain chemical substances or vitamins; metabolic disturbances connected with diabetes; and infection of a nerve by various germs, such as that which causes syphilis.

"Sciatics" is an ailment which is manifested by pain along the course of the sciatic nerve, and is one form of

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neuritis. It also results from various causes, such as pressure exerted on the nerve or its roots by a tumor or neoplasm or an over-growth of bone; irritation or inflammation of the sheath of the sciatic nerve; and many other causes.

232 The term "neuralgia" refers to a syndrome of pain, or violent spasms of pain, which occur along the course of various nerves.

"Gout" is a disease connected with a disturbance of the metabolic functions of the body, involving the absorption of uric acid, which may result in pathological changes in joints, bones, cartilages, and a number of internal organs, particularly the kidneys, which may be utterly destroyed thereby. In its early stages, the predominant symptoms of gout are recurring attacks of pain and swelling in the joints. Gout may cause deposits of crystalline material, with surrounding inflammation, in joints, resulting in the destruction of their function.

"Fibrositis" is a general term referring to an inflammation of the fibrous tissues of the body, arising from unknown causes, and manifested by symptoms of aching and stiffness about joints or in various muscle groups. It may result in sciatica.

The term "bursitis" refers to inflammation of a bursa, which is a sac, generally adjacent to a joint or a bony prominence of the body, containing fluid, the purpose of which is to act as a shock-absorber to provide for free movement of bones and joints. There are many types of bursitis, arising from known as well as unknown causes, such as gouty, tubercular, and gonorrheal bursitis.

Rheumatoid arthritis is a chronic, progressive, destructive disease affecting joints and organs of the body, characterized by pain, swelling, stiffness and limitation of motion in joints, and deterioration of the patient's general health. This disease is accompanied by pathological changes in the joints, such as thickening of the lining membrane; production of excessive fluid in the bursa in some instances, and absorption of fluid in others; atrophy of muscles, and sometimes destruction of portions of the bone ends, resulting in deformation of the joint. The cause of rheumatoid arthritis is unknown.

The term "osteoarthritis" refers to one of the chronic forms of joint diseases which has the pathological characteristic of a wearing away of cartilages and the production of excess bone at the margins of joints, which mani-

fests itself as a painful stiffness, creaking of joints, and sometimes loss of motion. Osteoarthritis may result from externally-caused injury, or from unknown causes.

The term "infectious arthritis" refers to a form of arthritis caused by invasion of the joint by a germ.

Paragraph Six: The various pathological conditions generally referred to as "arthritis" and "rheumatism" progress and develop differently. Likewise, they require different treatment, which will vary not only between different types of such ailments, but between different individuals suffering from the same ailment, and between different stages in the progress thereof. An adequate, effective, or reliable treatment for any kind of "arthritis" or "rheumatism" must, therefore, be predicated upon
233 individual diagnosis, in order to determine whether the patient has arthritis or rheumatism, the particular kind of such ailment present, and whether it arose from a known or an unknown cause. Such a diagnosis may require any or all of the following determinations:

1. History of the patient, including information as to age, sex, marital status, occupation, chronology of the present ailment; family history, such as age and cause of death of parents and relatives; any illness from which the patient may have suffered previously, particularly rheumatic fever, scarlet fever and streptococcus infections;

2. Detailed physical examination of every part of the patient's anatomy; and

3. Laboratory examination, such as blood count, serological test for syphilis, urinalysis, and certain other tests as they may seem useful in the individual case, such as X-ray and analysis of fluids in individual joints.

Paragraph Seven: An adequate, effective, or reliable treatment for any of the various types of ailments included in the general terms "arthritis" and "rheumatism" may involve application of various therapeutic measures, including diet; rest or change of occupation; various types of physiotherapy, such as orthopedic or thermal procedures; surgery; and medication. Delay of needed treatment may result in irreparable crippling, especially in those forms of arthritis and rheumatism known to be caused by specific infections. There is no drug, or combination of drugs, regardless of how administered, which will constitute an adequate, effective, or reliable treatment for any of the various forms of arthritis or rheumatism, nor is there any drug or combination of

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drugs which can restore to normal the pathological changes which result from any arthritis or rheumatic ailment. It is possible, however, to restore to normal certain of such pathological changes which are due to vitamin deficiency, by administration in sufficient quantity of the appropriate vitamin.

Paragraph Eight: The thiamine chloride, which is a vitamin, contained in the drug preparation "Imdrin" is insufficient in amount to have any beneficial effect in the treatment of a patient suffering from neuritis due to thiamine deficiency. The calcium succinate content of such preparation has no significant therapeutic value in the treatment of arthritic or rheumatic conditions, nor does it affect the functioning of the enzyme system of the blood or bones, for the reason that, when administered orally, as specified in the directions for taking Imdrin, succinates are converted to sugar by the liver, and, as succinates, never reach the bloodstream. The caffeine content of Imdrin has no significant therapeutic value in the treatment of any form of arthritis or rheumatism. The only ingredients contained therein which possess active analgesic properties are manganese salicylate and acetylsalicylic acid, the use and effect of which, as analgesics and antipyretics, have been known for many years. Acetylsalicylic acid has for many years been sold throughout the United States as an analgesic under the name "aspirin." Accordingly, the drug preparation "Imdrin" does not constitute a new discovery of scientific research.

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The analgesic effect of these salicylates, in the amount contained in the drug preparation "Imdrin," upon the aches, pains and discomforts of arthritic or rheumatic conditions is limited and temporary. Accordingly, such drug preparation is not remarkable, amazing, or sensational.

Paragraph Nine: The drug preparation "Imdrin," however taken, will not constitute an adequate, effective, or reliable treatment for any arthritic or rheumatic condition, including neuritis, sciatica, gout, neuralgia, fibrositis, and bursitis, nor will said preparation arrest the progress, correct the underlying causes, or effect a cure of any of such conditions. The drug preparation "Imdrin," however taken, will not ameliorate the aches, pains and discomforts of any arthritic or rheumatic condition to any extent beyond the temporary and partial relief thereof afforded by its salicylate content as an analgesic and

antipyretic. The drug preparation "Imdrin," however taken, will have no significant effect upon severe aches, pains and discomforts accompanying any arthritic or rheumatic condition, and will afford temporary and partial relief of only minor aches, pains and discomforts. With the exception of such temporary and partial relief, the drug preparation "Imdrin" cannot be depended upon to have any effect whatever upon the symptoms accompanying any arthritic or rheumatic condition, including neuritis, sciatica, gout, neuralgia, fibrositis, and bursitis. Persons forced by such ailments to discontinue their normal habits of life or their regular occupations will not be enabled, by taking the drug preparation "Imdrin," to resume such habits or occupations.

The drug preparation "Imdrin," however taken, will not correct disturbances nor insure adequate functioning of the enzyme system of the blood or bones.

Paragraph Ten: Respondents' representations concerning the drug preparation "Imdrin," as hereinbefore found, are false and misleading in material respects; have had the capacity and tendency to mislead and deceive, and have misled and deceived a substantial portion of the purchasing public into the erroneous and mistaken belief that such representations were true, and into the purchase of substantial quantities of said drug preparation as a result thereof; and constitute false advertisements within the intent and meaning of the Federal Trade Commission Act.

Conclusion.

The acts and practices of respondents, as herein found, are all to the prejudice and injury of the public, and constitute unfair and deceptive acts and practices in commerce within the meaning of the Federal Trade Commission Act.

Order.

It Is Ordered that the respondents Rhodes Pharmacal Company, Inc., a corporation, and J. Sanford Rose
235 and Jerome H. Rose, individually and as officers of said corporation, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of the drug preparation "Imdrin," or any product of substantially similar composition or possessing substantially similar properties, whether sold

under the same name or under any other name, do forthwith cease and desist from directly or indirectly:

1. Disseminating or causing to be disseminated, by means of the United States mails or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, any advertisement which represents, directly or by implication:

(a) that the taking of said preparation will constitute an adequate, effective or reliable treatment for neuritis, sciatica, gout, neuralgia, fibrositis, bursitis, or any other kind of arthritic or rheumatic condition;

(b) that said preparation will arrest the progress or correct the underlying causes of, or will cure, neuritis, sciatica, gout, neuralgia, fibrositis, or bursitis, or any other kind of arthritic or rheumatic condition;

(c) that said preparation will afford any relief of severe aches, pains, and discomforts of neuritis, sciatica, gout, neuralgia, fibrositis, bursitis, or any other arthritic or rheumatic condition, or have any therapeutic effect upon any of the symptoms or manifestations of any such condition in excess of affording temporary and partial relief of minor aches, pains, or fever;

(d) that said preparation is remarkable, amazing, or sensational, or that it is a sensational new discovery of scientific research, or a new discovery;

(e) that persons afflicted with neuritis, sciatica, gout, neuralgia, fibrositis, bursitis, or any other kind of arthritic or rheumatic condition, so severely that such afflictions interfere with their normal habits of life or their ability to carry on their regular occupations will be enabled, by taking the drug preparation "Imdrin," to resume such normal habits or regular occupations;

(f) that the taking of said preparation will have any therapeutic effect upon the functioning of the enzyme systems of the blood or bones.

2. Disseminating or causing to be disseminated any advertisement by any means for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase in commerce, as "commerce" is defined in the Federal Trade Commission Act, of the drug preparation "Imdrin," which advertisement contains any of the representations prohibited in Paragraph 1 hereof.

Abner E. Lipscomb,
Hearing Examiner.

January 11, 1952.

236-237 UNITED STATES OF AMERICA.

BEFORE FEDERAL TRADE COMMISSION.

Commissioners:

James M. Mead, Chairman,
Lowell B. Mason,
John Carson,
Stephen J. Spingarn,
Albert A. Carretta.

* * (Caption—5691) * *

OPINION OF THE COMMISSION.

By Mead, Commissioner:

This matter involves the truth or falsity of certain claims contained in respondents' advertisements of their medicinal preparation Imdrin. There is no contest as to the wording of the advertisements or the formula of the preparation. The contest is as of the meaning of the said advertisements, the value of said preparation and the appropriate form of order, if any, required herein.

Respondents contend that their representations mean only that "Imdrin" will provide relief of pain of arthritis or rheumatism and do not mean that it will provide treatment and cure of arthritis and rheumatism. Respondents no not contend that "Imdrin" will cure arthritis or rheumatic conditions in the sense of removing the basic causes of these conditions. They do contend, however, that the use of "Imdrin" as directed will relieve the pains, suffering, inflammation, stiffness and redness of persons affected with arthritis or rheumatism.

Certain of respondents' advertisements for Imdrin contained the following statements:

> "Arthritis and Rheumatism Sufferers. Don't needlessly suffer crippling pains—untold agony and torture experienced by sufferers of arthritis, rheu-
> 238 matism, lumbago, neuralgia and all of the other similar miserable ailments. Now blessed relief may be yours. Imdrin Tablets—the wonder prescription—acts immediately—decisively—brings marvelous

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freedom from pain. Imdrin is more than a so-called "pain-killer" or soothing balm. It's a combination of recognized medically tested ingredients that works internally * * * systematically! Yes. Imdrin works effectively—safely—through the *blood stream.* Gets down deep—right where the trouble lies. Fights poisons and toxins that cause all the pain, misery and suffering."

"You've read about the wonders of sulfa and penicillin! But you may never before have heard about I-m-d-r-i-n, Imdrin, the brand-new, safe and reliable way to curb pain that is being prescribed by many doctors to bring quick, blessed relief from arthritic pain, stiffness and swelling. Imdrin contains a remarkable research discovery! * * * that not only stops pain, helps reduce swelling, but acts to uncork the joints!"

"Cases deemed almost hopeless * * * persons who suffered and waited and hoped for as long as twenty years were able to live happy comfortable lives once again. No other medicament for rheumatism and arthritis can make this amazing statement * * * and back it up with proven hospital and clinical records."

By their statements in these advertisements that their preparation would do more than relieve pain, that it would reduce swelling and act to uncork the joints, that it would fight the poisons and toxins that cause the pain, that it was a remarkable research discovery comparable to sulpha and penicillin and by other statements of like import, respondents have represented and implied that Imdrin is a newly discovered drug which constitutes an effective treatment for and will cure arthritis and rheumatic conditions in addition to representing that its use will afford relief from the aches and pains caused by such conditions.

In an attempt to prove that their advertisements do not mean to the purchasing public that Imdrin will provide a treatment and cure of arthritis and rheumatism, 239 respondents had a survey conducted. This survey consisted of showing three of respondents' advertisements to 300 members of the public and asking them whether those advertisements meant that Imdrin would provide relief from pain of arthritis or rheumatism or whether they meant that it would provide a treatment and cure of arthritis or rheumatism. Two of the advertise-

ments shown were short and relatively free of any statements implying respondents' preparation would have any effect other than pain relief. The third advertisement prominently featured pain relief in bold faced type. By the form of their questions respondents' survey implied that the advertisements represented one or the other, either Imdrin would provide pain relief or it would provide a cure. As all of respondents' advertisements claim Imdrin will provide pain relief in addition to their other representations, a survey implying that the advertisement either represented a cure or it represented pain relief was improperly designed to determine if they did not represent both. But even under these conditions the results of the survey show that nine percent of those questioned stated that the advertisements represented that Imdrin would provide a treatment and cure for arthritis and rheumatism. This number alone would constitute a sufficient showing of the deceptive nature of respondents' advertisements. Upon this record the Commission is of the opinion that the hearing examiner correctly held that respondents represented Imdrin would provide a treatment and cure for arthritic and rheumatic conditions in addition to their claim that its use would provide relief from the pains accompanying these conditions.

The greater weight of the expert medical testimony is that, when taken as directed, the only ingredient in Imdrin which has any significant beneficial effect is the salicylate. This ingredient is present in each tablet in the form of 1.9 grains of acetylsalicylic acid (i. e. aspirin) and 1.5 grains of manganese salicylate. Salicylate in the amounts contained in Imdrin, when taken as directed, has no therapeutic value in the treatment of arthritic or rheumatic conditions and has no beneficial effect upon the symptoms of such conditions other than to afford a temporary and partial relief from the less severe pains and fever caused by such conditions, according to the greater weight of the expert medical testimony.

240 In an attempt to disprove this medical testimony respondents presented witnesses who testified as to the improvement in their conditions upon taking Imdrin. From their testimony it is clear that improvement occurred. However, due to the uncertainty of the proof as to the cause of their original condition and the proof that the use of Imdrin was the cause of their improvement,

this testimony is not sufficient to offset the testimony of outstanding experts in the field of arthritis and rheumatism to the effect that temporary and partial relief of less severe pain and fever are the only effects possible from the use of this preparation, as directed, by persons suffering with arthritic or rheumatic conditions.

Respondents particularly except to the provision in the order contained in the hearing examiner's initial decision prohibiting them from advertising that Imdrin will have any therapeutic effect upon any of the symptoms of any arthritic or rheumatic condition in excess of affording temporary and partial relief of minor aches, pains or fever or that Imdrin is a remarkable, amazing, sensational new discovery of scientific research or that it will enable users to resume their normal habits or regular occupations.

In support of their contention that Imdrin was properly described as a new discovery, respondents point out that it does contain a unique combination of ingredients. However, the greater weight of the expert medical testimony shows that, in the dosage prescribed, the only beneficial ingredient is the salicylate which has been known and used for years by the medical profession for the relief of pain and the reduction of fever. The combining of other ingredients, which have no beneficial effect in the quantities used, with commonly known and used drugs does not make the resultant preparation a remarkable, amazing, sensational new discovery of scientific research. The use of such false and misleading representations was properly prohibited.

In support of their contention that they should not be restricted to representing that Imdrin's only therapeutic effect on the symptoms of arthritis and rheumatism is temporary and partial relief of minor aches, pains and fever, respondents contend (1) that this prohibition is not supported by the facts of record, (2) that the hearing
241 examiner in another case involving a similar preparation, Dolcin, omitted the word partial from his order thus permitting representations that said preparation would provide complete relief for minor aches, pains and fever, temporarily, and (3) that the court's have held that the use of the word "temporary" in the manner used in this order is improper as it is uncertain in its meaning and unnecessary for the protection of the consuming public.

The greater weight of the expert medical testimony is that the only ingredients in respondents' preparation which

have any significant beneficial effect, when taken as directed, are the 1.9 grains of acetylsalicylic acid and the 1.5 grains of manganese salicylate. Taken as directed, six tablets per day, Imdrin provides a daily dosage of 20.4 grains of salicylate containing compounds. Salicylates provide temporary relief from pain, the extent of the relief varying, within limits, according to the amount of the dosage. The expert medical testimony is unanimous that 20.4 grains is not a sufficient daily dosage to relieve the most severe pains resulting from arthritis and rheumatic conditions, and the greater weight of the expert medical testimony, including that of respondents' witness, Dr. Black, is that this constitutes too low a daily dosage for complete relief from pains accompanying an average case.

In the case referred to by respondents involving Dolcin, a similar preparation, while the quantity of salicylate in each tablet was comparable to that present in Imdrin, the dosage recommended for acute symptoms was double the dosage recommended for Imdrin. On the basis of that record the hearing examiner concluded that such a dosage would provide complete but temporary relief from the minor pains accompanying arthritis and rheumatism. The Commission is of the opinion that the daily dosage directed for the use of Imdrin was sufficient to afford only partial relief from minor pains accompanying arthritis and that respondents' advertisements offering complete relief from such pains are unfair and deceptive.

Respondents raise two objections to the use of the word "temporary" in the hearing examiner's order. One, that it is unnecessary, and two, that it is uncertain in its meaning. The Commission is of the opinion that advertising claims should always be so limited where only temporary relief is afforded unless by the very nature of the
242 claim, there is no real danger of deception. The danger of deception in this case lies particularly in the fact that respondents desire to represent that their preparation will afford relief from pains due to a particular cause, namely, pains of arthritis and rheumatism. By limiting the type of pain relief claimed, respondents imply that a lasting relief will be achieved by eliminating the cause of the pain. Advertisements offering relief from arthritic pain and suffering thus imply a lasting relief to a much greater extent than would be implied by claims for relief from underarm perspiration or odor or relief

from itching. It is in the same class as those representations which state that the use of a preparation will relieve delayed menstruation or remove dandruff, which unless qualified imply that the symptom will be permanently eliminated by removing its cause.

The decisions of the courts which have considered this question and permitted the use of the word temporary in certain orders while eliminating it in others, in the main, are distinguishable on this basis. In those cases involving a preparation which provides only temporary symptomatic relief where the representations implied that the relief or removal of the symptom would be effected by eliminating its cause, the courts have held that the requirement that such representations be limited to claiming temporary relief or removal of the symptom constituted a proper prohibition. Such a requirement, although indefinite as to the duration of the effectiveness of the preparation, can be satisfied by any representation which shows that lasting relief is not claimed. The Commission, therefore, is of the opinion that the inclusion of the word "temporary" as used in the order contained in the hearing examiner's initial decision is necessary and proper in all respects.

The Commission is of the further opinion that all of the findings as to the facts contained in the initial decision are supported by reliable, substantial, and probative evidence of record; that the conclusion contained therein is correct; and that the order to cease and desist is proper upon this record and is required to provide proper relief from respondents' illegal practices. We, therefore, are of the
243 opinion that respondents' appeal is of no merit and that it should be denied.

Commissioner Carretta did not participate in the decision of this matter for the reason that oral argument on the merits was heard prior to his appointment to the Commission.

IN THE UNITED STATES COURT OF APPEALS

For the Seventh Circuit.

Rhodes Pharmacal Company, Inc., a corporation, and J. Sanford Rose and Jerome H. Rose, individually and as officers of said corporation, *Petitioners,*
vs.
Federal Trade Commission, *Respondent.* } 10748.

PETITION TO REVIEW CEASE AND DESIST ORDER OF THE FEDERAL TRADE COMMISSION AND STATEMENT OF POINTS.

To the Honorable Justices of the United States Court of Appeals for the Seventh Circuit:

Rhodes Pharmacal Company, Inc., an Ohio corporation, having its offices and principal place of business in the City of Chicago, Illinois, and J. Sanford Rose, of Chicago, Illinois, and Jerome H. Rose, of New York, New York, individually and as officers of said corporation, petitioners herein, petition this Court for a review of an order of the Federal Trade Commission, respondent herein (Docket No. 5691, dated October 3, 1952), and respectfully represent that:

1. On October 3, 1952, the Federal Trade Commission, respondent herein, entered an order directing petitioners to cease and desist from disseminating or causing to be disseminated certain advertisements alleged to be false and to constitute unfair and deceptive acts and practices in commerce in violation of Sections 5 and 12 of the Federal Trade Commission Act (15 U. S. C. §§ 45 (a), 52).

2. Said order, as corrected, was served on all petitioners herein on October 9, 1952. Petitioners carry on business, and the acts and practices in question were used, in the State of Illinois and within the jurisdiction of this Court, all of which is alleged and stated in the complaint of respondent herein, the evidence adduced at hearings

held pursuant thereto and respondent's findings of fact. The jurisdiction of this Court to entertain this petition for review is based on Section 5(c) of the Federal Trade Commission Act (15 U. S. C. § 45 (c)).

3. Said order directs petitioners to cease and desist, inter alia, from:

"1. Disseminating or causing to be disseminated, by means of the United States mails or by any means in commerce, as 'commerce' is defined in the Federal Trade Commission Act, any advertisement which represents, directly or by implication (emphasis supplied):

"(a) that the taking of said preparation (petitioners' product, known as 'Imdrin') will constitute an adequate, effective or reliable treatment for neuritis, sciatica, gout, neuralgia, fibrositis, bursitis, or any other kind of arthritic or rheumatic condition;

"(b) that said preparation will arrest the progress or correct the underlying causes of, or will cure, neuritis, sciatica, gout, neuralgia, fibrositis, or bursitis, or any other kind of arthritic or rheumatic condition;

"(c) that said preparation will afford any relief of severe aches, pains, and discomforts of neuritis, sciatica, gout, neuralgia, fibrositis, bursitis, or any other arthritic or rheumatic condition, or have any therapeutic effect upon any of the symptoms or manifestations of any such condition in excess of affording temporary and partial relief of minor aches, pains, or fever;

"(d) that said preparation is remarkable, amazing, or sensational, or that it is a sensational new discovery of scientific research, or a new discovery;

"(e) that persons afflicted with neuritis, sciatica, gout, neuralgia, fibrositis, bursitis, or any other kind of arthritic or rheumatic condition, so severely that such afflictions interfere with their normal habits of life or their ability to carry on their regular occupations will be enabled, by taking the drug preparation 'Imdrin', to resume such normal habits or regular occupations;

"(f) that the taking of said preparation will have any therapeutic effect upon the functioning of the enzyme systems of the blood or bones.

"2. Disseminating or causing to be disseminated any advertisement by any means for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase in commerce, as 'commerce' is defined in the Fed-

eral Trade Commission Act, of the drug preparation 'Imdrin', which advertisement contains any of the representations prohibited by paragraph 1 hereof."

4. Petitioners aver that the foregoing cease and desist order, set out in paragraph 3 above, and each and every the terms and conditions thereof (including, without limitation, the underscored or italicized portions thereof), together with the findings of fact upon which said order is based and the conclusions there drawn with respect thereto, are each arbitrary and capricious, in excess of the statutory and constitutional authority of the Commission, unsupported by substantial evidence and hence unlawful and should be set aside, for the following reasons constituting the

Points Upon Which Petitioners Intend to Rely:

1. The findings of the Federal Trade Commission and the conclusions and cease and desist order based thereon are improper, invalid, beyond the power, jurisdiction and authority of the Federal Trade Commission and are arbitrary and capricious action in deprivation of the petitioners' rights and guaranties of due process of law under the Fifth Amendment to the Constitution of the United States.

2. The findings, conclusions and order are not supported by or based upon any substantial, credible evidence, but are against the manifest weight of the evidence. The entire record discloses that the weight of the substantial evidence in the record supports the case of petitioners.

3. Respondent erroneously and without basis of fact or reasonable inference found, inter alia, that (emphasis supplied):

(a) "Paragraph Four: * * * from the quoted statements considered in the light of the entire (petitioners') advertisement, it may reasonably be inferred that 'Imdrin' is * * * effective in the treatment of rheumatic and arthritic conditions * * *."

(b) Petitioners thereby "represent that it possesses therapeutic properties curative of such (arthritic and rheumatic) conditions * * *."

(c) "the picturization of the anatomical chart (in petitioners' advertisement selected as 'typical' by the Hearing Examiner), accompanied by the statement 'Where

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Rheumatism Strikes And How to Detect It', logically warrants the inference that the drug preparation 'Imdrin' is offered as a treatment for rheumatic and arthritic conditions."

(d) "such statements (as those quoted by the Hearing Examiner in sub-paragraph 2 of Paragraph Four of his findings), and other similar thereto relating to the relief of the symptoms and manifestations of arthritic and rheumatic conditions, do not qualify or restrict respondents' other, broader representations, nor limit their advertisements to the representation that the drug product 'Imdrin' is offered only as an analgesic and antipyretic * * *"

(e) "The offering of said product as a 'scientific remedy' implies that its use may effect cures * * *."

(f) "The representation that '* * * Persons who suffered and waited and hoped for as long as twenty years were able to live happy, comfortable lives once again * * *' clearly implies that such statements may truthfully be made * * * and accordingly, that said preparation is an effective medication (as the Commission interprets that term) for rheumatic and arthritic conditions." It is respectfully represented that this is a non sequitur.

(g) In predicating inference upon inference, the Hearing Examiner erroneously concluded and further found "that through the above quoted advertisements and others similar thereto, respondents have represented, directly and by implication, as follows:

"(1) That * * * 'Imdrin' * * * constitutes an adequate, effective and reliable treatment for, and will arrest the progress and correct the underlying causes of * * * rheumatism and arthritis, * * * and that said preparation will cure * * * such diseases * * *.

(2) That the drug preparation 'Imdrin' * * * will afford complete, permanent relief from the aches, pains and discomforts thereof; * * *

"(4) That by taking * * * 'Imdrin' * * *, persons suffering from any or all of (these) afflictions will be enabled to resume their normal habits of life and their regular occupations; * * *"

(h) "Paragraph Six: The various pathological conditions generally referred to as 'arthritis' and 'rheumatism' * * * require different treatment, * * * An adequate, effective, or reliable treatment for any kind of 'arthritis' or 'rheumatism' must, therefore, be predicated on indi-

vidual diagnosis, * * * (which) may require any or all of the following determinations: * * *"

(i) "Paragraph Seven: * * * Delay of needed treatment may result in irreparable crippling, especially in those forms of arthritis and rheumatism known to be caused by specific infections * * *."

(j) "Paragraph Eight: The thiamine chloride, which is a vitamin, contained in * * * 'Imdrin' is insufficient in amount to have any beneficial effect * * *The calcium succinate content of such preparation has no significant therapeutic effect in the treatment of arthritic or rheumatic conditions, * * *. The caffeine content of 'Imdrin' has no significant therapeutic value in the treatment of any form or arthritis or rheumatism. The only ingredients contained therein which possess active analgesic properties are manganese salicylate and acetylsalicylic acid, the use and effect of which, as anagesics and antipyretics, have been known for many years."

(k) "Acetylsalicylic acid has * * * been sold * * * under the name 'aspirin'. Accordingly, the drug preparation 'Imdrin' does not constitute a new discovery of scientific research." This is clearly a non sequitur.

(l) "The analgesic effect of these salicylates, in the amount contained in * * 'Imdrin', upon the aches, pains and discomforts of arthritic or rheumatic conditions is limited and temporary. Accordingly, such drug preparation is not remarkable, amazing, or sensational."

(m) "Paragraph Nine: * * * 'Imdrin', however taken, will not constitute an adequate, effective, or reliable treatment for any arthritic or rheumatic condition, * * *."

(n) "'Imdrin', however taken, will not ameliorate the aches, pains and discomforts of any arthritic or rheumatic condition to any extent beyond the temporary and partial relief thereof afforded by its salicylate content as an analgesic and antipyretic."

(o) "* * * 'Imdrin', however taken, will have no significant effect upon severe aches, pains and discomforts accompanying any arthritic or rheumatic condition, * * *."

(p) "('Imdrin') will afford temporary and partial relief of only minor aches, pains and discomforts."

(q) "With the exception of such temporary and partial relief, * * * 'Imdrin' cannot be depended upon to have any effect whatever upon the symptoms accompanying any arthritic or rheumatic condition, * * *."

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(r) "Persons forced by such ailments to discontinue their normal habits of life or their regular occupations will not be enabled, by taking * * * 'Imdrin', to resume such habits or occupations."

(s) "Paragraph Ten: Respondents' representations concerning * * * 'Imdrin', as hereinbefore found, are false and misleading in material respects; have had the capacity and tendency to mislead and deceive, and have misled and deceived a substantial portion of the purchasing public into the erroneous and mistaken belief that such representations were true, and into the purchase of substantial quantities of said drug preparation as a result thereof; and constitute false advertisements within the intent and meaning of the Federal Trade Commission Act."

4. The Federal Trade Commission erroneously, and without warrant of law or fact, in addition to all of the unwarranted conclusions already drawn, concluded that "the acts and practices of respondents, as herein found, are all to the prejudice and injury of the public, and constitute unfair and deceptive acts and practices in commerce within the meaning of the Federal Trade Commission Act."

5. The findings as to the facts and conclusions of the respondent are not sufficient in law to support or sustain the cease and desist order of respondent.

6. The trial examiner, in his conduct of the hearings herein, erred in admitting, over objection of petitioners' attorneys, incompetent, irrelevant and immaterial evidence offered by the Federal Trade Commission and in excluding proper, competent, relevant and material evidence offered on the part of petitioners, the substance of which will be set forth more fully in petitioners' Brief to be filed herein.

7. The trial examiner, in conducting the hearings and making his findings of fact and conclusions, showed his bias in favor of the Federal Trade Commission and against petitioners. The Commission, in its conduct of the entire case, likewise demonstrated its bias.

8. The trial examiner erred in refusing to allow respondents an opportunity for sur-rebuttal or rejoinder designed to re-qualify certain expert witnesses of respondents whose qualifications the Federal Trade Commission first sought to impeach in its rebuttal evidence.

9. The cease and desist order goes further than is reasonably necessary or warranted to correct, and bears no reasonable relationship to the alleged evils complained

of and found by the Federal Trade Commission to exist in this matter.

10. Paragraph 1(c) of the cease and desist order issued by the Federal Trade Commission herein is discriminatory, contrary to and out of harmony with the precedents established by the Commission and the decisions of the Courts and is therefore unlawful, unauthorized and wrongful.

11. The cease and desist order of the Commission is so indefinite, vague, ambiguous, meaningless and uncertain as to render compliance therewith a matter of conjecture, speculation and guess work, and in this respect constitutes an invalid exercise of the Commission's authority.

12. The testimony and the entire record shows that the cease and desist order is not in the public interest.

Wherefore, petitioners pray that this Court review the order to cease and desist and that said order against petitioners be set aside and modified in whole or in part; and for such other and further relief as to the Court may seem meet and just.

Dated this 25th day of November, 1952.

Frank E. Gettleman,
Arthur Gettleman,
Edward Brodkey,
Counsel for Petitioners,
10 South La Salle Street,
Chicago, Illinois.

Endorsed: In the United States Court of Appeals. * * (Caption) * * Petition to Review Cease and Desist Order of the Federal Trade Commission and Statement of Points. U. S. C. A.-7 Filed Nov 25 1952. Kenneth J. Carrick, Clerk.

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At a regular term of the United States Court of Appeals for the Seventh Circuit held in the City of Chicago and begun on the sixth day of October, in the year of our Lord one thousand nine hundred and fifty-three, and of our Independence the one hundred and seventy-eighth.

No. 10748

RHODES PHARMACAL COMPANY, INC., ET AL., PETITIONERS

vs.

FEDERAL TRADE COMMISSION, RESPONDENT

Petition for Review of Order of the Federal Trade Commission

And afterwards, to-wit: On the third day of November, 1953, there was filed in the office of the Clerk of this Court, the Opinion of the Court, which said Opinion is in the words and figures following, to-wit:

IN THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

No. 10748

OCTOBER TERM AND SESSION, 1953

RHODES PHARMACAL COMPANY, INC., ET AL., PETITIONERS,

vs.

FEDERAL TRADE COMMISSION, RESPONDENT

Petition for Review of Order of the Federal Trade Commission

November 3, 1953

Before DUFFY, FINNEGAN and LINDLEY, *Circuit Judges*

DUFFY, *Circuit Judge:*

Petitioners ask us to review and set aside an order entered on October 3, 1952, by the Federal Trade Commission against petitioners, requiring them to cease and desist from making certain claims and representations in commerce in advertising their drug product "Imdrin."

Each tablet of Imdrin contains 1.9 grains acetylsalicylic acid, 1.5 grains manganese salicylate, 2.3 grains calcium succinate (anhy-

drous), 0.16 grain caffeine, 1 mg. thiamine chloride. Directions were: "Two tablets before each meal with water."

Petitioners have been engaged in an extensive advertising campaign by means of radio announcements and large advertisements in newspapers and magazines. The first line in the printed ads usually contains the statement printed in large bold type, "Amazing New Discovery for Rheumatism, Arthritis," followed by a subhead, "Hospital Tested. Stops Swelling, Uncorks Joints, Contains Sensational New Research Discovery." The ads usually contain pictures of men and women with faces or bodies apparently contorted with pain, and further down in the ad, under headings such as, "Resume Confident Pain-Free Living With Amazing New Imdrin," would appear pictures of men and women bowling or golfing, and apparently vibrant with good health. Some of the advertisements used by petitioner and which were described by the Commission in its findings are:

> "* * * Persons whose cases of suffering have been thought almost hopeless . . . yes, even people who had suffered and hoped for twenty years, were able to live free of pain . . . like happy human beings once again. No other medicine for rheumatism and arthritis thus far discovered by medical science has such an amazing record * * *."
>
> "Don't needlessly suffer crippling pains—untold agony and torture experienced by sufferers of arthritis, rheumatism, lumbago, neuralgia and all of the other similar miserable ailments. Now blessed relief may be yours. Imdrin tablets—the wonder prescription—acts immediately—decisively—brings marvelous freedom from pain. * * *"

And in its advertising by radio, various announcers said:

> "Imdrin . . . the brand-new, safe and reliable way to cure pain that's being prescribed by many doctors to bring quick, pleasant relief from arthritis pain, stiffness, and swelling."
>
> "Stiffness and swelling disappear . . . often overnight."
>
> "You've read about the wonders of sulfa and penicillin. But you may never before have heard about I-m-d-r-i-n, Imdrin, the brand-new safe and reliable way to curb pain that is being prescribed by many doctors to bring quick, blessed relief from arthritic pain, stiffness and swelling. Imdrin contains a remarkable research discovery . . . that not only stops pain, helps reduce swelling, but acts to uncork the joints. Thus clinical reports prove that people who have suffered from arthritis, sciatica, rheumatism, and neuritis up to 20 years have been eased of pain often in 48 hours, sometimes overnight * * *. Users of Imdrin report that they have resumed normal

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living. For them the aching joints and muscles are a thing of the past. Profit by the experience of many others. Get Imdrin . . . from your druggist today. * * *"

The Commission found that the terms "arthritis" and "rheumatism" are general terms used interchangeably to refer to a large number of diseases or pathological conditions including, among others, neuritis, sciatica, neuralgia, gout, fibrositis, bursitis, rheumatod arthritis, osteo-arthritis, rheumatic fever and infectious arthritis, all of which are characterized by one or more of such symptoms as pain, stiffness, and inflammatory changes in the joints and tissues of the body; that different conditions referred to as arthritis and rheumatism have different causes, and that not all muscular aches and pains are rheumatic; that different treatment is required for different types of rheumatism and arthritis; that the various kinds of arthritis and rheumatism do not respond to the same treatment; that effective and reliable treatment for any kind of arthritis or rheumatism must be predicated upon individual diagnosis. The Commission also found, "Delay of needed treatment may result in irreparable crippling, especially in those forms of arthritis and rheumatism known to be caused by specific infections."

The Commission also found, "The thiamine chloride, which is a vitamin, contained in * * * 'Imdrin' is insufficient in amount to have any beneficial effect in the treatment of a patient suffering from neuritis due to thiamine deficiency. The calcium succinate content of such preparation has no significant therapeutic value in the treatment of arthritic or rheumatic conditions, nor does it affect the functioning of the enzyme system of the blood or bones * * *. The caffeine content of Imdrin has no significant therapeutic value in the treatment of any form of arthritis or rheumatism. The only ingredients contained therein which possess active analgesic properties are manganese salicylate and acetylsalicylic acid, the use and effect of which, as analgesics and antipyretics, have been known for many years. Acetylsalicylic acid has for many years been sold throughout the United States as an analgesic under the name 'aspirin.' The analgesic effect of these salicylates, in the amount contained in the drug preparation 'Imdrin,' upon the aches, pains and discomforts of arthritic or rheumatic conditions is limited and temporary."

The Commission found that petitioners had represented (1) that Imdrin, when taken as directed, constitutes an adequate, effective and reliable treatment for, and will arrest the progress and correct the underlying causes of all forms of rheumatism, and arthritis, including neuritis, sciatica, neuralgia, gout, fibrositis and bursitis, and that said preparation will cure all forms of such diseases or afflictions; (2) that Imdrin, when taken as directed, constitutes an

adequate, effective and reliable treatment for the symptoms and manifestations of all of the above-named diseases or afflictions, and will afford complete, permanent relief from the aches, pains and discomforts thereof; (3) that Imdrin is a remarkable, amazing, sensational new discovery of scientific research; (4) that by taking Imdrin as directed persons suffering from any of the above-named diseases or afflictions will be enabled to resume their normal habits of life and their regular occupations; (5) that the taking of Imdrin as directed will correct any disturbance of the vital enzyme system of the blood and bones, and will insure adequate functioning thereof.

The Commission then found that Imdrin will not constitute an adequate, effective, or reliable treatment for any arthritic or rheumatic condition nor will it arrest the progress, or correct the underlying causes, or effect a cure of any of such conditions; that Imdrin, however taken, will not ameliorate the aches, pains and discomforts of any arthritic or rheumatic condition to any extent beyond the temporary and partial relief thereof afforded by its salicylate content as an analgesic and antipyretic; further that Imdrin has no significant effect upon severe aches, pains and discomforts accompanying any arthritic or rheumatic condition, and will afford temporary and partial relief of only minor aches, pains and discomforts, and that it will not correct disturbances nor insure adequate functioning of the enzyme system of the blood or bones.

The Commission found that petitioner's representations in its advertisements of Imdrin were false and misleading in material respects and had the capacity and tendency to and did mislead and deceive a substantial portion of the purchasing public, and that same constituted false advertisements within the meaning of the Federal Trade Commission Act.

The order of the Commission, which we are asked to review, requires the petitioners to cease and desist from disseminating advertisements as to Imdrin representing (a) that the taking of said preparation is an adequate, effective, or reliable treatment for neuritis, sciatica, gout, neuralgia, fibrositis, or bursitis, or any other kind of arthritic or rheumatic condition; (b) that Imdrin will arrest the progress or correct the underlying causes of, or will cure, the conditions listed in (a); (c) that Imdrin will afford any relief of severe aches, pains, and discomforts of conditions named in (a) or have any therapeutic effect upon any of the symptoms or manifestations of any such condition in excess of affording temporary and partial relief of minor aches, pains or fever; (d) that Imdrin is remarkable, amazing or sensational or is a sensational new discovery of scientific research, or a new discovery; (e) that persons afflicted with conditions listed in (a) so severely that such afflictions interfere with their normal habits of life will be enabled, by taking Imdrin, to resume such normal habits or regular occupations; and (f) that the

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taking of Imdrin will have any therapeutic effect upon the functioning of the enzyme system of the blood or bones.

Petitioners urge that there is no substantial evidence in the record for the Commission's finding that they represented that Imdrin constituted an adequate, effective and reliable treatment for all forms of arthritis and rheumatism. They point out that they never used the word "cure" in their advertisements and assert that their product was offered to the public only as a relief from pain. It is apparent they made an effort to avoid the use of the word "cure" although one radio advertisement stated, "In a moment I'll be back to tell you folks who have been suffering from arthritis, sciatica, rheumatism and neuritis, news about Imdrin . . . the Brand-new, safe and reliable way to cure pain that's being prescribed by many doctors to bring quick, pleasant relief from arthritis pain, stiffness, and swelling." Furthermore, in other ads petitioners often included descriptions of situations which, to many potential users, might well imply a cure, such as: "Imdrin * * * brings marvelous freedom from pain," and "For them (users of Imdrin) the aching joints and muscles are a thing of the past," which would lead such persons to believe or hope that Imdrin would effect a cure from their previously existing condition. Again petitioners asserted in their ads, "Amazing New Discovery for Rheumatism, Arthritis." They did not confine themselves to asserting that Imdrin was for relief of pains or aches from rheumatism or arthritis. In several instances the courts have held that a representation that a preparation is to be used "for" a disease is equivalent to labeling it a cure or remedy for such disease. *Aronberg* v. *Federal Trade Commission*, 7 Cir., 132 F. 2d 165, 168; *Hall* v. *United States*, 5 Cir., 267 F. 795, 798.

Petitioners place great reliance upon a survey conducted for them by one Breiman, who interviewed 300 people in New York City, to each of whom he showed three of petitioners' advertisements (Exhibits Nos. 6, 8 and 13), and asked two questions: "Do these ads mean that Imdrin will provide relief of pain of arthritis or rheumatism?" or "Do these ads mean that Imdrin will provide treatment and cure for arthritis and rheumatism?" He reported that approximately 91% of those interviewed stated that the advertisements meant Imdrin would provide relief from pain, while approximately 9% stated that they meant that Imdrin would provide treatment and cure of arthritis and rheumatism. Petitioners insist that this survey provided the only reliable evidence of consumer reaction, against which, they claim, opinions and inferences cannot prevail.

Theoretically a sound method of ascertaining the meaning of petitioners' advertisements to the consuming public would be to interview potential customers and ascertain what those ads meant to them. A survey of the attitude of dentists toward a drug preparation was considered by the court in *Bristol-Myers Co.* v. *Federal Trade*

Commission, 4 Cir., 185 F. 2d 58, 60. The government offered a survey of consumer reaction in *United States* v. *88 Cases, More or Less, Containing Bireley's, etc.*, 3 Cir., 187 F. 2d 967, 974. The testimony of witnesses drawn from the general public, as to the impressions made upon their minds upon reading the advertisements, was admissible. This procedure of investigation has received the sanction of the courts. *Gulf Oil Corp.* v. *Federal Trade Commission*, 5 Cir., 150 F. 2d 106, 108; *Stanley Laboratories, Inc.* v. *Federal Trade Commission*, 9 Cir., 138 F. 2d 388, 391; *Ford Motor Co.* v. *Federal Trade Commission*, 6 Cir., 120 F. 2d 175, 182.

Obviously the value of a survey depends upon the manner in which it was conducted—whether the techniques used were slanted or fair. For instance, the Commission here contends that the form of, and the manner of asking the questions excluded the possibility of potential consumers answering that the advertisements made representations both as to treatment and cure, as well as to provide relief from pain.

In *Quaker Oats Co.* v. *General Mills*, 7 Cir., 134 F. 2d 429, 433, we stated that all the evidence obtained in that case by the surveys could be disregarded and the plaintiff would still prevail. However, we did not say then, and we do not say now, that evidence obtained as a result of a survey is of no probative value.[1] We recognize that the rule is well established that evidence which would be excluded in an ordinary lawsuit may, under many circumstances, be received on hearings before an administrative agency. The Supreme Court has stated, "* * * technical rules for exclusion of evidence applicable in jury trials do not apply to proceedings before federal administrative agencies in the absence of a statutory requirement that such rules are to be observed." *Opp Cotton Mills, Inc., et al.* v. *Administrator of the Wage and Hour Division, etc.*, 312 U. S. 126, 155. See also: *Stanley Laboratories* v. *Federal Trade Commission*, 9 Cir., 138 F. 2d 388, 392.

The important question to be resolved is the impression given by an advertisement as a whole. Advertisements which are capable of two meanings, one of which is false, are misleading. *United States* v. *95 Barrels of Vinegar*, 265 U. S. 438, 442. Advertisements which create a false impression, although literally true, may be prohibited. *Koch* v. *Federal Trade Commission*, 206 F. 2d 311; *Consolidated Book Publishers* v. *Federal Trade Commission*, 7 Cir., 53 F. 2d 942, 944. The Federal Trade Commission Act provides, "* * * and in determining whether any advertisement is misleading, there shall be taken into account * * * representations made or suggested * * *." 15 U. S. C. A., Sec. 55(a).

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[1] See interesting discussion in *66 Harv. Law Rev. 498*, "Public Opinion Surveys as Evidence: The Pollsters Go to Court."

The meaning of advertisements to the public and their capacity to deceive are questions of fact for the Commission to determine, and its conclusions may not be disturbed unless arbitrary or clearly wrong. *Gulf Oil Corp.* v. *Federal Trade Commission, supra.* Applicable here is our statement in *Zenith Radio Corp.* v. *Federal Trade Commission*, 7 Cir., 143 F. 2d 29, 31, "The Commission had a right to look at the advertisements in question, consider the relevant evidence in the record that would aid it in interpreting the advertisements, and then to decide for itself whether the practices engaged in by the petitioner were unfair or deceptive, as charged in the complaint."

We think the findings of the Commission are supported by substantial evidence. We agree with the conclusions of the Commission that petitioners were engaged in unfair and deceptive practice in commerce. We think that the cease and desist order should be enforced in the manner proposed, with the exception of sub-section (e) which should be modified. Orders of the Commission, which we are called upon to enforce, must not be indefinite or ambiguous. *Caldwell* v. *Federal Trade Commission*, 7 Cir., 111 F. 2d 889, 891. Under Paragraph 1(e) the petitioners are restrained from representing "that said preparation will afford any relief of severe aches, pains, and discomforts of neuritis, sciatica, gout, neuralgia, fibrositis, bursitis, or any other arthritic or rheumatic condition, or have any therapeutic effect upon any of the symptoms or manifestations of any such condition in excess of affording temporary and partial relief of minor aches, pains, or fever." Thus the representations that Imdrin will afford any relief of severe aches, pains and discomforts is prohibited, but permission is given to represent that it would afford temporary and partial relief of minor aches, pains or fever.

In *Carter Products, Inc., et al.* v. *Federal Trade Commission*, 7 Cir., 186 F. 2d 821, 826, we stated, "* * * this court in *D.D.D. Corp.* v. *Federal Trade Commission*, * * * disapproved of the use of the word 'temporary' because of its very uncertain meaning. We pointed out that it might mean only a few minutes, yet experts testifying before the Commission in this case admitted that Arrid's deodorant properties are effective at least three to six hours. We think in the case at bar, as we did in the *D.D.D.* case, that protection of the public does not require petitioners to use the word 'temporary' or 'temporarily,' and that to require its use would be unfair to the petitioners in representing the truth as to Arrid." In *D.D.D. Corp.* v. *Federal Trade Commission*, 7 Cir., 125 F. 2d 679, 682, we said, "We are also of the view that the word 'temporary' as used in * * * the Commission's order should be eliminated. We see no reason why petitioner should not be permitted to represent its product as a relief for itching. It does not cure either the

itch or its cause, but it does afford relief. * * * The word 'temporary' carries an uncertain meaning."

It was overwhelmingly established in the case at bar that Imdrin affords relief for the pain and discomfort incident to many rheumatic and arthritic conditions. The duration of time that such relief was afforded differed with the individuals who used Imdrin. It was just as firmly established that Imdrin would not furnish permanent relief or effect a cure of rheumatic or arthritic conditions. Petitioners should be permitted to represent the truth, but be required to refrain from making the highly exaggerated claims which they have heretofore made. The five sections of the order which we approve will very largely correct the misleading and deceptive representations which petitioners have made in their advertisements.

Paragraph 1(c) of the cease and desist order will be modified to read:

> "(c) that said preparation will afford any permanent relief of aches, pains, and discomforts of neuritis, sciatica, gout, neuralgia, fibrositis, bursitis, or any other arthritic or rheumatic condition, or effect a cure of the symptoms or manifestations of any such condition."

As hereinbefore indicated, the cease and desist order is affirmed, and the enforcement thereof, as modified, is ordered.

A true copy:

Teste:

KENNETH J. CARRICK,
Clerk of the United States Court of Appeals for the Seventh Circuit. (SEAL.)

And on the same day, to-wit: On the third day of November, 1953, the following further proceedings were had and entered of record, to-wit:

Tuesday, November 3, 1953

Before: HON. F. RYAN DUFFY, *Circuit Judge;* HON. PHILIP J. FINNEGAN, *Circuit Judge;* HON. WALTER C. LINDLEY, *Circuit Judge.*

No. 10748

RHODES PHARMACAL COMPANY, INC., ET AL., PETITIONERS

vs.

FEDERAL TRADE COMMISSION, RESPONDENT

Petition for Review of Order of the Federal Trade Commission

This cause came on to be heard on the transcript of the record from the Federal Trade Commission, and was argued by counsel.

On consideration whereof: It is ordered and adjudged by this Court that Paragraph 1(c) of the order of the Federal Trade Commission entered in this cause on October 3, 1952 be modified to read:

> "(c) that said preparation will afford any permanent relief of aches, pains, and discomforts of neuritis, sciatica, gout, neuralgia, fibrositis, bursitis, or any other arthritic or rheumatic condition, or effect a cure of the symptoms or manifestations of any such condition."

It is further ordered and adjudged by this Court that, as indicated in the Opinion of this Court filed this day, all other parts of the order of the Federal Trade Commission entered in this cause on October 3, 1952, be affirmed, and the enforcement thereof, as modified, is ordered.

And afterwards, to-wit: On the seventeenth day of November, 1953, there was filed in the office of the Clerk of this Court, a Petition for a Rehearing, which said Rehearing, is in the words and figures following, to-wit:

No. 10748

IN THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

RHODES PHARMACAL COMPANY, INC., A CORPORATION, AND J. SANFORD ROSE AND JEROME H. ROSE, INDIVIDUALLY AND AS OFFICERS OF SAID CORPORATION, PETITIONERS

v.

FEDERAL TRADE COMMISSION, RESPONDENT

Petition for Rehearing

ROBERT B. DAWKINS,
Assistant General Counsel,
DONOVAN DIVET,
Special Attorney,
Attorneys for Federal Trade Commission.

U. S. C. A.—7, filed Nov. 17, 1953. Kenneth J. Carrick, Clerk.

IN THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

No. 10748

RHODES PHARMACAL COMPANY, INC., A CORPORATION, AND J. SANFORD ROSE AND JEROME H. ROSE, INDIVIDUALLY AND AS OFFICERS OF SAID CORPORATION, PETITIONERS

v.

FEDERAL TRADE COMMISSION, RESPONDENT

Petition for Rehearing

I

Comes now the respondent, Federal Trade Commission, by its attorneys, and believing that this Honorable Court, in its decision of November 3, 1953, in the above-entitled matter, modifying Paragraph 1 (c) of the Commission's order to cease and desist, unintentionally removed from the order important provisions wholly unrelated to any question of "temporary relief", therefore respectfully petitions this Court for a rehearing upon the grounds hereinafter set forth.

II

Paragraph 1 (c) of said order to cease and desist as entered by the Commission read:

> 1. (c) That said preparation will afford any relief of severe aches, pains and discomforts of neuritis, sciatica, gout, neuralgia, fibrositis, bursitis, or any other arthritic or rheumatic condition, or have any therapeutic effect upon any of the symptoms or manifestations of any such condition in excess of affording temporary and partial relief of minor aches, pains, or fever;

Paragraph 1 (c) as modified by the Court reads:

> 1. (c) That said preparation will afford any permanent relief of aches, pains, and discomforts of neuritis, sciatica, gout, neuralgia; fibrositis, bursitis, or any other arthritic or rheumatic condition or effect a cure of the symptoms or manifestations of any such condition.

From a comparison of Paragraph 1 (c) as entered by the Commission with the same paragraph as modified by the Court, it is apparent that the Commission's order forbade petitioners to rep-

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resent (1) that the product Imdrin would afford any relief of severe aches, pains and discomforts (2) or have any therapeutic effect upon any of the symptoms of arthritis or rheumatism other than minor aches, pains or fever, and that the order as modified by the Court does not forbid them to make these representations.

Respondent respectfully shows to the Court that there are many symptoms of arthritis and rheumatism other than minor aches, pains and discomforts, such as swelling, stiffness and limitation of motion (Tr. 656-661; 707-710) as the Commission found (Initial Decision, Paragraph Five; Tr. 954-955).

III

In its opinion the Court said: "The Commission then found * * *; further that Imdrin has no significant effect upon severe aches, pains and discomforts accompanying any arthritic or rheumatic condition, and will afford temporary and partial relief of only minor aches, pains and discomforts, * * *" (Opinion, p. 4). This finding supports both of the prohibitions of Paragraph 1 (c) of the order to cease and desist as entered by the Commission and as set forth in Paragraph 2 above.

After considering the finding last quoted and other findings, the Court said: "We think the findings of the Commission are supported by substantial evidence" (Opinion, p. 8).

IV

Respondent respectfully calls the attention of the Court to the fact that Paragraph 1 (c) of the order, as modified by the Court, permits petitioners to advertise that Imdrin will afford any degree of relief petitioners choose to claim, provided it is less than permanent relief, of the severe aches, pains and discomforts of arthritis or rheumatism, which is contrary to the finding of the Commission that the product as taken "will have no significant effect upon severe aches, pains and discomforts accompanying any arthritic or rheumatic condition * * *" (Initial Decision, Paragraph 9; Tr. 958).

Respondent further respectfully calls the attention of the Court to the fact that Paragraph 1 (c) of the order to cease and desist, as modified by the Court, permits petitioners to advertise that the product Imdrin will afford any degree of relief petitioners choose to claim, provided it is less than permanent relief, of all symptoms of arthritis and rheumatism, and forbids them only to represent that the product will effect a cure of the symptoms and manifestations. The Commission has found that the product, however taken, will afford temporary and partial relief of only minor aches, pains and discomforts and that "with the exception of such temporary and partial relief, the drug product 'Imdrin' cannot be depended upon to

have any effect whatever upon the symptoms of any arthritic or rheumatic condition * * *" (Initial Decision, Paragraph 9; Tr. 958).

V

Respondent, Federal Trade Commission, sincerely believing that this Court has unintentionally overlooked the above-described effects of the modification of Paragraph 1 (c) of the order to cease and desist, and believing that the public interest will be seriously and adversely affected if Paragraph 1 (c) is allowed to stand in its present modified form, most earnestly and respectfully petitions the Court to amend its modification of Paragraph 1 (c) of the order to cease and desist so that it will not permit the above-described representations in contravention of the Commission's findings as approved by the Court.

VI

For the convenience of the Court, the following form of amendment of said Paragraph 1 (c) is respectfully suggested:

> 1. (c) That said preparation will afford relief from the swelling, stiffness or limitation of motion due to arthritis or rheumatism, or from the severe aches or pains of arthritic or rheumatic conditions; or that said preparation will afford permanent relief from any of the aches or pains of arthritic or rheumatic conditions.

Respectfully submitted.

ROBERT B. DAWKINS,
Assistant General Counsel,
DONOVAN DIVET,
Special Attorney,
Attorneys for Federal Trade Commission.

And afterwards, to-wit: On the twenty-fifth day of November, 1953, there was filed in the office of the Clerk of this Court, an Answer to Petition for Rehearing, which said Answer is in the words and figures following, to-wit:

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IN THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

No. 10748

RHODES PHARMACAL COMPANY, INC., ET AL., PETITIONERS,

vs.

FEDERAL TRADE COMMISSION, RESPONDENT

Petition for Review of Order of the Federal Trade Commission

ANSWER TO PETITION FOR REHEARING

FRANK E. GETTLEMAN,
ARTHUR GETTLEMAN,
EDWARD BRODKEY,
10 S. La Salle Street,
Chicago 3, Illinois,
Attorneys for Petitioners.

U.S.C.A.-7
Filed Nov. 25, 1953.
KENNETH J. CARRICK,
Clerk.

IN THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

No. 10748

RHODES PHARMACAL COMPANY, INC., ET AL., PETITIONERS,

vs.

FEDERAL TRADE COMMISSION, RESPONDENT

Petition for Review of Order of the Federal Trade Commission

ANSWER TO PETITION FOR REHEARING

In answer to Respondent's* Petition for Rehearing, Petitioners* sincerely believe that this Court fully appreciated the effect of its modification of the Commission's cease and desist order herein and

* The terms "Respondent" and "Petitioner," herein are used to describe the parties to the original petition for Review and not the present "Petitioner" for Rehearing.

clearly understood and intended the several changes in its phraseology.

I

The Court Had Power to Reject the Form of Order Proposed by the Commission and Properly Did So

The Federal Trade Commission, in its Petition for Rehearing, argues that because this Court said that

> "the findings of the Commission are supported by substantial evidence," (Opinion, p. 8),

it must, on that account, adopt the Commission's order to cease and desist. The Commission's order itself is not sacrosanct. The statute provides only that

> "the *findings* of the Commission *as to the facts*, if supported by evidence, shall be conclusive." 15 U.S.C.A. § 45(c) [Emphasis supplied.]

Nothing is said about the conclusiveness of the *order*. On the contrary, "the statute gives this court power not only to affirm or reverse, but also to modify the order of the Commission. 15 U.S.C.A. § 45(c) and (d). [Also, Administrative Procedure Act, 5 U.S.C.A. § 1001 *et seq.*] *This power to modify extends to the remedy. Federal Trade Commission* v. *Royal Milling Co.*, 288 U.S. 212" (1932); *Carter Products, Inc.* v. *Federal Trade Commission*, 7 Cir., 1951, 186 F. 2d 821, 826; *Folds* v. *Federal Trade Commission*, 7 Cir., 1951, 187 F. 2d 658, 661.

Accordingly, this Court had full power to modify the Commission's order to cease and desist, and to do so even if it sustained the Commission's findings of fact. In the *Royal Milling Co.* case, *supra*, at p. 217, the Supreme Court said:

> "Although we sustain the Commission in its findings and conclusions * * * we think * * * the Commission went too far in ordering * * * suppression of the trade names. * * *"

It is therefore immaterial, and perfectly proper, that this Court declined to implement the Commission's findings in the way it desired. It was proper to refuse to effectuate the findings as to the effect of Imdrin on "severe" pains and on "temporary" and "partial" relief therefrom by adopting the remedies proposed by the Commission. The Court said:

> "The five sections of the order which we approve will very largely correct the misleading and deceptive representations which petitioners have made in their advertisements." (Opinion, p. 9.)

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These sections alone will prohibit petitioners' claiming their product to be a cure for rheumatism and arthritis, or even an effective treatment for those diseases. As modified, the order will not permit petitioners to say their product cures even the symptoms of these diseases or affords any permanent relief from the pains thereof. They may not refer to their product in "exaggerated" terms, nor may they claim it will enable a user to return to normal work or living. In fact, the only representations not specifically prohibited are that the product relieves the "severe" pains and other symptoms of rheumatism and arthritis or relieves pain completely.

II

The Court Refused to Adopt the Entire Proposed Cease and Desist Order for Good Reasons, Expressed and Implied.

Both in its brief and on oral argument, the Commission urged this Court to affirm its original order to cease and desist, which proscribed petitioners' advertising that its product would afford relief from "severe" pains or more than "temporary" and "partial" relief from "minor" ones. Its contentions in that behalf were then made known to this Court, but the terms of the Commission's order were rejected as unnecessary to the protection of the public and unduly oppressive to petitioners.

This Court refused to require petitioners to use the word "temporary [relief] in their advertising, for the reasons it had previously stated in the *Carter Products* case, *supra*, and in the case of *D. D. D. Corporation* v. *Federal Trade Commission*, 7 Cir., 1942, 125 F. 2d 679, 682, that:

> "We think * * * that *protection of the public does not require* petitioners to use the word 'temporary' or 'temporarily', and that to require its use *would be unfair* to petitioners in representing the truth * * * [and that] the word 'temporary' carries an uncertain meaning." [Emphasis supplied.]

While the Court does not state any specific reason for modifying the Commission's order to eliminate reference to "severe" and "minor" [pains] and to "partial" [relief], the general rule is that, in the absence of specific statutory or constitutional mandate, a reviewing court need not assign reasons for its decisions and for each part thereof. 14 Am. Jur. § 132, pp. 347 and 348; cf. *Respublica* v. *Doan*, 1 Dall. (U.S.) 86, *Joyce, Inc.* v. *Fern Shoe Co.*, 32 F. Supp. 401, cause remanded, 116 F. 2d 498. This is especially true where the reason for the decision is obvious, so that, in many cases *per curiam* decisions are appropriate. In our case, it seems apparent that this Court eliminated the requirements to use the words "severe", "minor" and "partial" for the same reason it deleted

the word "temporary", namely, that all these terms were of the same vague and uncertain connotation. To some persons "partial" relief might mean the difference between agony and bearable pain, while to others it might mean the virtual elimination thereof. And what to one individual is a "severe" pain, to another is a "minor" one. To paraphrase the Court's observation with respect to the designation of relief as "temporary", the degree of relief afforded and the severity of the pain relieved "differed with the individuals who used Imdrin." (Opinion, p. 9.)

III

The Commission's Position Herein Is Inconsistent

The Commission is likewise unwarranted in assuming that because this Court stated in its opinion (p. 8) that "We think the findings of the Commission are supported by substantial evidence", it meant that *every* individual finding made was so established and supported. If that were what this Court meant to be understood as holding, it would thereby have agreed with the finding of the Commission (Opinion, p. 4) that Imdrin would not ameliorate rheumatic pains other than temporarily, and to the deletion of that prohibition from the order the Commission makes no objection. (Petition for Rehearing, p. 4.) And if the clause above quoted be interpreted to mean that this Court thought Imdrin would afford only temporary relief, the Commission does not question the propriety of the remedy chosen by the Court for that purpose.

IV

The Record Herein Will Not Sustain the Form of Order Desired By the Commission.

Respondent's suggestion that, because the Commission found there are symptoms of rheumatism and arthritis other than pain, including stiffness, swelling and the like, this Court should therefore approve an order to cease and desist from representing that the use of Imdrin would afford relief from these additional symptoms, is neither logical nor supported by the record herein. The Commission made no finding that Imdrin would have *no effect* upon these additional symptoms or that it would not relieve them. There is no finding that Imdrin will not relieve stiffness and the like (R. 958), but the record shows that its use will aid in accomplishing that end (R. 357, 396, 556, 704). And paragraph 1(c) of the modified order prohibits petitioners from advertising that Imdrin would "effect a cure of the symptoms or manifestations of any such condition." (Opinion, p. 9.) It seems to us that such a prohibi-

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tion goes far enough to effectuate the findings in that behalf. "The orders should go no further than is reasonably necessary to correct the evil and preserve the rights of competitors and the public." *Federal Trade Commission* v. *Royal Milling Co.*, 288 U.S. 212, 217 (1932).

It is accordingly urged that the Petition for Rehearing be denied.

Respectfully submitted,

FRANK E. GETTLEMAN,
ARTHUR GETTLEMAN,
EDWARD BRODKEY,
Attorneys for Respondents.

And afterwards, to-wit: On the fifth day of January, 1954, the following further proceedings were had and entered of record, to-wit:

Tuesday, January 5, 1954.

Before:

Hon. F. Ryan Duffy, Circuit Judge
Hon. Philip J. Finnegan, Circuit Judge
Hon. Walter C. Lindley, Circuit Judge

No. 10748

RHODES PHARMACAL COMPANY, INC., ET AL., PETITIONERS

vs.

FEDERAL TRADE COMMISSION, RESPONDENT

Petition for Review of Order of the Federal Trade Commission

It is ordered by the Court that the Petition for a Rehearing of this cause be, and the same is hereby, Denied.

And afterwards, to-wit: On the second day of February, 195 there was filed in the office of the Clerk of this Court, Petitioner Motion for Entry of Final Decree, which said Motion is in th words and figures following, to-wit:

IN THE UNITED STATES COURT OF APPEALS FOR TH SEVENTH CIRCUIT

U.S.C.A.-7. Filed Feb. 2, 1954. Kenneth J. Carrick, Clerk.

No. 10748

RHODES PHARMACAL COMPANY, INC., A CORPORATION, AND J. SANFOR ROSE AND JEROME H. ROSE, INDIVIDUALLY AND AS OFFICERS OF SA CORPORATION, PETITIONERS,

v.

FEDERAL TRADE COMMISSION

NOTICE

To: Robert B. Dawkins

Assistant General Counsel, Federal Trade Commission
Donovan Divet
Special Attorney, Federal Trade Commission
Federal Trade Commission,
Washington, D. C.,
Attorneys for Respondent.

Please Take Notice that we have this day filed with the Clerk o the United States Court of Appeals for the Seventh Circuit a Fina Decree in the above entitled cause, copy of which is hereto at tached and herewith served upon you, together with Petitioners motion that the same be entered by the Court instanter. Pleas be governed accordingly.

(S.) FRANK E. GETTLEMAN,
(S.) ARTHUR GETTLEMAN,
(S.) EDWARD BRODKEY,
Attorneys for Petitioners.

Dated: February 2, 1954.

STATE OF ILLINOIS,
County of Cook, ss.

Edward Brodkey, being first duly sworn on his oath, deposes and says that he served a copy of the above and foregoing notice, to gether with a copy of the Final Decree and motion for the entry of same thereto attached upon the attorneys for respondent by enclosing a copy of said notice, motion and decree in an envelope addressed to said Robert B. Dawkins, Assistant General Counsel,

and Donovan Divet, Special Attorney, Federal Trade Commission, at said Federal Trade Commission, Washington, D. C., and depositing same, with sufficient United States postage thereto attached, in the post office located in the United States Courts Building, Chicago, Illinois, on February 2, 1954, at 3:00 p.m.

And affiant further says that a copy of said notice, motion and decree for each of said attorneys for respondent was enclosed in said envelope and so mailed to said persons.

——— ———,

Subscribed and sworn to before me this 2nd day of February, 1954.

——— ———,
Notary Public.

IN THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

No. 10748

RHODES PHARMACAL COMPANY, INC., A CORPORATION, AND J. SANFORD ROSE AND JEROME H. ROSE, INDIVIDUALLY AND AS OFFICERS OF SAID CORPORATION, PETITIONERS,

v.

FEDERAL TRADE COMMISSION, RESPONDENT

Petitioners' Motion for Entry of Final Decree

Now come RHODES PHARMACAL COMPANY, INC., a corporation, and J. SANFORD ROSE and JEROME H. ROSE, individually and as officers of said Corporation, petitioners herein, by Frank E. Gettleman, Arthur Gettleman and Edward Brodkey, their attorneys, and move this Honorable Court to enter herein instanter a Final Decree, copy of which is hereto attached and made a part hereof, and show:

1. This Court entered its order of modification and affirmance of the cease and desist order before that time issued by the Federal Trade Commission, and opinion in support thereof, on November 3, 1953;

2. This Court, on January 5, 1954, entered its order denying the Petition for Rehearing before that time filed herein by the Federal Trade Commission;

3. The Federal Trade Commission, respondent herein, has wholly failed within ten days from the filing of an opinion directing the entry of a decree enforcing the order of an administrative agency, board or commission to serve upon these petitioners and file with

the Clerk of this Court a proposed decree in conformity with such opinion, as required by Rule 30 of the Rules of the United States Court of Appeals for the Seventh Circuit.

(S.) FRANK E. GETTLEMAN,
(S.) ARTHUR GETTLEMAN,
(S.) EDWARD BRODKEY,
Attorneys for Petitioners.

And afterwards, to-wit: On the tenth day of February, 1954, there was filed in the office of the Clerk of this Court, an Answer to Petitioners' Motion for Entry of Final Decree, which said Answer is in the words and figures following, to-wit:

IN THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

U.S.C.A. 7. Filed Feb. 10, 1954.

No. 10748

RHODES PHARMACAL COMPANY, INC., A CORPORATION, AND J. SANFORD ROSE AND JEROME H. ROSE, INDIVIDUALLY AND AS OFFICERS OF SAID CORPORATION, PETITIONERS,

v.

FEDERAL TRADE COMMISSION, RESPONDENT.

KENNETH J. CARRICK,
Clerk.

NOTICE

To: FRANK E. GETTLEMAN,
ARTHUR G. GETTLEMAN,
EDWARD BRODKEY,
Attorneys for Petitioners.

Please take notice that we have this day mailed to the Clerk of the United States Court of Appeals for the Seventh Circuit an Answer to Petitioners' Motion for Entry of Final Decree in the above-entitled matter, copy of which is hereto attached and herewith served upon you.

(S.) ROBERT B. DAWKINS,
Assistant General Counsel.
(S.) DONOVAN DIVET,
Special Attorney.
Attorneys for Respondent.

Dated: February 8, 1954.

CITY OF WASHINGTON,
District of Columbia, ss.

Donovan Divet, being first duly sworn, deposes and says that he served a copy of the above and foregoing notice, together with a copy of the respondent's answer to petitioners' motion for entry of final decree, upon the attorneys for petitioners, by enclosing a copy of said notice and answer in an envelope addressed to Frank E. Gettleman, Arthur G. Gettleman and Edward Brodkey, at Suite 1400, Otis Building, 10 South LaSalle St., Chicago, Ill., and depositing same in the United States mails, on Febuary 8, 1954; that said envelope was a duly stamped and Government franked envelope.

(S.) DONOVAN DIVET.

Subscribed and sworn to before me, this 8th day of February, 1954.

(S.) DOROTHA D. NOONAN,
Notary Public.

(Seal.) My commission expires November 14, 1956.

IN THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

No. 10748

RHODES PHARMACAL COMPANY, INC., A CORPORATION, AND J. SANFORD ROSE AND JEROME H. ROSE, INDIVIDUALLY AND AS OFFICERS OF SAID CORPORATION, PETITIONERS,

v.

FEDERAL TRADE COMMISSION, RESPONDENT.

ANSWER TO PETITIONERS' MOTION FOR ENTRY OF FINAL DECREE

Comes Now the Federal Trade Commission, the above-named respondent, and answering the petitioners' motion for entry of final decree, respectfully shows to the Court:

1. That respondent has not submitted a proposed form of final decree because of the fact that the time for applying for a writ of certiorari to review the decision of this Court in this matter has not expired and the question of applying for such writ is now under consideration.

2. That if a decree is to be entered at this time respondent has no objection to the form of the said proposed decree except (1) to

the second unnumbered paragraph on page 1 of said proposed final decree and (2) to the use of the word "and" in paragraph 1(a) of said proposed final decree.

3. That the Court's order for modification and enforcement of the Commission's order to cease and desist made no provision for the modification of either the paragraph of the order to cease and desist corresponding to the second unnumbered paragraph on page 1 of said proposed final decree or for the modification of said paragraph 1(a) of the Commission's order to cease and desist.

4. That the said unnumbered second paragraph on page 1 of said proposed final decree reads as follows:

> Now, therefore, it is hereby ordered, adjudged and decreed that the petitioners, Rhodes Pharmacal Company, Inc., a corporation, and J. Sanford Rose and Jerome H. Rose, individually and as officers of said corporation, their officers, representatives, agents, and employees, directly or through any corporate or other device in connection with the offering for sale, sale, and distribution in commerce as "commerce" is defined in the Federal Trade Commission Act of a preparation for the treatment of the symptoms and alleviation of the aches, pains and fever of rheumatism and arthritis known as Imdrin under that name or of any product of substantially the same composition as said product Imdrin, do forthwith cease and desist from:

5. That the corresponding paragraph of the Commission's order to cease and desist (Transcript 958-959) reads:

> It is ordered that the respondents Rhodes Pharmacal Company, Inc., a corporation, and J. Sanford Rose and Jerome H. Rose, individually and as officers of said corporation, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of the drug preparation "Imdrin," or any product of substantially similar composition or possessing substantially similar properties, whether sold under the same name or under any other name, do forthwith cease and desist from directly or indirectly:

6. That the said second unnumbered paragraph on page 1 of said proposed final decree if included in the Court's final decree would leave the prohibitions of paragraphs 1 (a), (b), (c), (d), (e), and (f) as set forth in said proposed final decree applicable only to the sale and offering for sale and distribution in commerce of a product sold under the name "Imdrin" and not to the identical product if sold under any other name, and applicable only to a product offered, sold, and distributed in commerce for the treatment of the symptoms and alleviation of the aches, pains and fever of rheuma-

tism and arthritis and not applicable to any product sold, for example, as a cure or treatment of arthritis or rheumatism or sold as a cure for symptoms of arthritis or rheumatism other than aches, pains and fever.

7. That paragraph 1(a) as set forth in proposed final decree reads:

> (a) That the taking of said preparation will constitute an adequate, effective and reliable treatment for neuritis, sciatica, gout, neuralgia, fibrositis, bursitis, or any other kind of arthritic or rheumatic condition.

8. That the corresponding paragraph in the Commission's order to cease and desist (Transcript 959) reads:

> (a) That the taking of said preparation will constitute an adequate, effective or reliable treatment for neuritis, sciatica, gout, neuralgia, fibrositis, bursitis, or any other kind of arthritic or rheumatic condition.

9. That as the said paragraph 1(a) reads in the said proposed final decree the petitioners would be free to represent that their product "Imdrin" constitutes an adequate treatment, an effective treatment or a reliable treatment and would be forbidden only to represent that it constitutes an adequate effective *and* reliable treatment.

Wherefore, respondent prays the Court that any final decree entered be so worded as to enforce the Commission's order to the extent that it has been affirmed by the Court and particularly in the two paragraphs hereinabove called to the attention of the Court.

Respectfully submitted,

(S.) ROBERT B. DAWKINS,
Assistant General Counsel,
(S.) DONOVAN DIVET,
Special Attorney,
Attorneys for Respondents.

Dated: February 8, 1954.

And afterwards, to-wit: On the seventeenth day of February, 1954, the following further proceedings were had and entered of record, to-wit:

U.S.C.A. 7. Filed Feb. 17, 1954. Kenneth J. Carrick, Clerk.

IN THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

No. 10748

RHODES PHARMACAL COMPANY, INC., A CORPORATION, AND J. SANFORD ROSE AND JEROME H. ROSE, INDIVIDUALLY AND AS OFFICERS OF SAID CORPORATION, PETITIONERS,

v.

FEDERAL TRADE COMMISSION, RESPONDENT

Feb. 17, 1954

Final Decree

Rhodes Pharmacal Company, Inc., a corporation, and J. Sanford Rose and Jerome H. Rose, individually and as officers of said Corporation, having filed in this Court on November 25, 1952, their petition to review and set aside an order to cease and desist issued against them on October 3, 1952, by the Federal Trade Commission, respondent herein, in a proceeding before said respondent entitled "In the Matter of Rhodes Pharmacal Company, Inc., and J. Sanford Rose and Jerome H. Rose, individually and as officers of Rhodes Pharmacal Company, Inc., Docket Number 5691"; and a copy of said petition having been served upon the respondent; and the respondent having thereafter certified and filed herein as required by the Federal Trade Commission Act, a transcript of the entire record in said proceeding; and the matter having been heard by this Court on briefs and oral argument; and this Court having thereafter fully considered the matter and having rendered its decision on November 3, 1953, modifying Paragraph 1 by eliminating subparagraph (c) thereof, to-wit, "that said preparation will afford any relief of severe aches, pains and discomforts of neuritis, sciatica, gout, neuralgia, fibrositis, bursitis, or any other arthritic or rheumatic condition, or have any therapeutic effect upon any of the symptoms or manifestations of any such condition in excess of affording temporary and partial relief of minor aches, pains, or fever;" and by the insertion in lieu thereof of the following clause, "that said preparation will afford any permanent relief of aches, pains, and discomforts of neuritis, sciatica, gout, neuralgia, fibrositis, bursitis, or any other arthritic or rheumatic condition or effect

a cure of the symptoms or manifestations of any such condition"; and the Court having affirmed the said order of the Federal Trade Commission as thus modified; and the Court on January 5, 1954 having denied respondent's petition for rehearing;

Now, therefore, it is hereby ordered, adjudged and decreed that the petitioners, Rhodes Pharmacal Company, Inc., a corporation, and J. Sanford Rose and Jerome H. Rose, individually and as officers of said corporation, their officers, representatives, agents, and employees, directly or through any corporate or other device in connection with the offering for sale, sale, and distribution in commerce as "commerce" is defined in the Federal Trade Commission Act of a preparation for the treatment of the symptoms and alleviation of the aches, pains and fever of rheumatism and arthritis known as Imdrin under that name or of any product of substantially the same composition as said product Imdrin, under any other name, do forthwith cease and desist from:

1. Disseminating or causing to be disseminated, by means of the United States Mails or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, any advertisement which represents, directly or by implication:

(a) that the taking of said preparation will constitute an adequate, effective or reliable treatment for neuritis, sciatica, gout, neuralgia, fibrositis, bursitis, or any other kind of arthritic or rheumatic condition;

(b) that said preparation will arrest the progress or correct the underlying causes of, or will cure, neuritis, sciatica, gout, neuralgia, fibrositis, or bursitis, or any other kind of arthritic or rheumatic condition;

(c) that said preparation will afford any permanent relief of aches, pains, and discomforts of neuritis, sciatica, gout, neuralgia, fibrositis, bursitis, or any other arthritic or rheumatic condition or effect a cure of the symptoms or manifestations of any such condition;

(d) that said preparation is remarkable, amazing, or sensational, or that it is a sensational new discovery of scientific research, or a new discovery;

(e) that persons afflicted with neuritis, sciatica, gout, neuralgia, fibrositis, bursitis, or any other kind of arthritic or rheumatic condition, so severely that such afflictions interfere with their normal habits of life or their ability to carry on their regular occupations will be enabled, by taking the drug preparation "Imdrin", to resume such normal habits or regular occupations;

(f) that the taking of said preparation will have any therapeutic effect upon the functioning of the enzyme systems of the blood or bones;

2. Disseminating or causing to be disseminated any advertisement by any means for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase in commerce, as "commerce" is defined in the Federal Trade Commission Act, of the drug preparation "Imdrin," which advertisement contains any of the representations prohibited in Paragraph 1 hereof;

And it is hereby further ordered, adjudged and decreed that within ninety days after the entry of this decree the petitioners shall file with the Federal Trade Commission a report in writing setting forth in detail the manner and form in which they have complied with this decree.

Without prejudice to the right of the United States as provided in Section 5(1) of the Federal Trade Commission Act to prosecute suits to recover penalties for violations of the aforesaid order to cease and desist hereby modified and hereby affirmed and enforced as modified and without prejudice to the right of the Federal Trade Commission to institute and maintain contempt proceedings for violation of this decree, this Court retains jurisdiction of this cause to enter such further orders herein from time to time as may become necessary effectively to enforce compliance in every respect with this decree and to prevent evasion thereof.

By the Court:

(S.) F. RYAN DUFFY,
(S.) PHILIP J. FINNEGAN,
(S.) WALTER C. LINDLEY,
United States Circuit Judges.

Dated: Feb. 17, 1954.
A True Copy:
Teste:
[SEAL.]

(S.) KENNETH J. CARRICK,
Clerk of the United States Court of Appeals for the Seventh Circuit.

And on the same day, to-wit: On the seventeenth day of February, 1954, there was issued to the Federal Trade Commission a Certified Copy of the Final Decree entered this date.

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Chicago 10, Illinois

I, Kenneth J. Carrick, Clerk of the United States Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing typewritten pages contain a true copy of the Opinion of the Court, Order pursuant to Opinion, Petition for Rehearing, Answer to Peti-

tion for Rehearing, Order denying Rehearing, Motion for Entry of Final Decree, Answer to Motion for Entry of Decree, Final Decree, in Cause No. 10748, Rhodes Pharmacal Company, Inc., et al., Petitioners, vs. Federal Trade Commission as the same remains upon the files and records of the United States Court of Appeals for the Seventh Circuit.

In Testimony Whereof I hereunto subscribe my name and affix the seal of said United States Court of Appeals for the Seventh Circuit, at the City of Chicago, this 24th day of March A.D. 1954.

[SEAL]

(S.) KENNETH J. CARRICK,
Clerk of the United States Court
of Appeals for the Seventh Circuit.

SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1953

No. —

FEDERAL TRADE COMMISSION, PETITIONER,

vs.

RHODES PHARMACAL COMPANY, ET AL.

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI

Upon consideration of the application of counsel for petitioner(s),

It is ordered that the time for filing petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including May 18th, 1954.

(S.) ROBERT H. JACKSON,
Associate Justice of the Supreme Court
of the United States.

Dated this 23rd day of March 1954.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1954 204817 1133

SUPREME COURT OF THE UNITED STATES

No. 80

OCTOBER TERM, 1954

FEDERAL TRADE COMMISSION, PETITIONER

vs.

RHODES PHARMACAL COMPANY, INC., ET AL.

Order allowing certiorari

(Filed October 14, 1954)

The petition herein for a writ of certiorari to the United States Court of Appeals for the Seventh Circuit is granted, and the case is transferred to the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

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In the Supreme Court of the United States

OCTOBER TERM, 1953

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No. —

FEDERAL TRADE COMMISSION, PETITIONER

v.

RHODES PHARMACAL COMPANY, INC., ET AL.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

The Solicitor General, on behalf of the Federal Trade Commission, prays that a writ of certiorari issue to review the judgment of the Court of Appeals for the Seventh Circuit entered in the above-entitled cause on November 3, 1953.

OPINION BELOW

The opinion of the Court of Appeals (R. 973) is reported at 208 F. 2d 382.

JURISDICTION

The judgment of the Court of Appeals was entered on November 3, 1953 (R. 980), and a timely petition for rehearing (R. 981) was denied on

January 5, 1954 (R. 989).[1] The time for filing a petition for a writ of certiorari was extended by Mr. Justice Jackson on March 23, 1954, to May 18, 1954 (R. 999). The jurisdiction of this Court is invoked under 28 U. S. C. 1254(1).

QUESTIONS PRESENTED

The Federal Trade Commission, after extensive hearings, found that respondents had made a number of misrepresentations in connection with the sale of the drug "Imdrin" as a treatment for rheumatism and arthritis, and entered a cease-and-desist order prohibiting such misrepresentations. The Court of Appeals held that the Commission's findings as to respondents' misrepresentations were supported by substantial evidence. The court further held, however, that the word "temporary," which the Commission used to characterize the relief from pain and discomfort afforded by the drug, rendered one provision of the order ambiguous. The court modified that provision by rewriting it in a way that had the effect of materially changing the scope of the Commission's order, and thereby permitting the respondents to continue making representations as to relief from pain and discomfort which the Commission had found to be false. The questions presented are:

1. Assuming *arguendo* that the word "temporary" makes the order ambiguous, whether the re-

[1] On February 17, 1954, the court entered a second judgment, captioned "Final Decree" (R. 996). Cf. *Federal Trade Commission* v. *Minneapolis-Honeywell Regulator Co.*, 344 U.S. 206.

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viewing court's power to modify a Commission order authorizes the court to rewrite the order so as to substitute its judgment for that of the Commission as to the measure of relief necessary to correct the illegal practices.

2. Whether the word "temporary," which the Commission used in describing the relief given by the drug, rendered the order so ambiguous as to justify its modification.

STATUTE INVOLVED

Section 5 of the Federal Trade Commission Act, 38 Stat. 717, as amended by the Act of March 21, 1938, 52 Stat. 111, 15 U. S. C. 45, provides in part as follows:

> (a) Unfair methods of competition in commerce, and unfair or deceptive acts or practices in commerce, are hereby declared unlawful.
>
> The Commission is hereby empowered and directed to prevent persons, partnerships, or corporations * * * from using unfair methods of competition in commerce and unfair or deceptive acts or practices in commerce.
>
> * * * * *
>
> (c) Any person, partnership, or corporation required by an order of the Commission to cease and desist from using any method of competition or act or practice may obtain a review of such order in the circuit court of appeals of the United States, within any circuit where the method of competition or the act or

practice in question was used or where such person, partnership, or corporation resides or carries on business, by filing in the court, within sixty days from the date of the service of such order, a written petition praying that the order of the Commission be set aside. * * * Upon such filing of the petition and transcript the court shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to make and enter upon the pleadings, evidence, and proceedings set forth in such transcript, a decree affirming, modifying, or setting aside the order of the Commission, and enforcing the same to the extent that such order is affirmed * * *.

STATEMENT

In August 1949, the Federal Trade Commission issued a complaint (R. 2) charging that respondents had engaged in unfair and deceptive acts and practices by disseminating false and misleading advertisements in connection with the sale of the drug "Imdrin" as a treatment for rheumatism and arthritis. After extensive administrative proceedings unchallenged as to regularity, the Commission in October 1952 issued its findings and opinion holding that respondents had engaged in such practices, and entered a cease-and-desist order.

The pertinent findings of the Commission [2]—which the Court of Appeals held to be supported by substantial evidence (R. 979)—are as follows:

[2] The Commission adopted the findings of the examiner (R. 946).

Respondents' radio and newspaper advertisements have represented that the drug "Imdrin," when taken as directed, constitutes an adequate, effective, and reliable treatment for, and will cure, all forms of rheumatism and arthritis; that it constitutes such a treatment for the symptoms and manifestations of those diseases; and that it will afford complete permanent relief from the aches, pains, and discomforts thereof (Par. Four, R. 954).[3] There is no drug which is an adequate or effective treatment for any of the various forms of arthritis or rheumatism (Par. Seven, R. 956). Effective treatment for these diseases varies among individuals (Par. Six, R. 956), must be predicated upon individual diagnosis (*ibid.*), and may involve therapeutic measures, including diet, rest or change

[3] The Commission found that respondents' "[t]ypical" advertisements (R. 949) included the following: "No Faster Arthritis Pain Relief Known * * * Stops Swelling. Uncorks Joints * * * Longtime sufferers from rheumatism, arthritis, neuritis and gout may find Imdrin gives glorious relief amazingly fast * * *" (*ibid.*); "Imdrin reduced joint swelling and eased pain rapidly" (R. 951); "If you have suffered the tortures of rheumatic or arthritic pains, swelling and stiffness . . . listen! Imdrin may answer your problem of comfortable living. * * * Cases deemed almost hopeless . . . persons who suffered and waited and hoped for as long as twenty years were able to live happy comfortable lives once again" (*ibid.*); "Imdrin is a product scientifically designed to aid in the relief of nagging aches, pains, swelling, and stiffness accompanying arthritis and related illnesses * * *" (R. 952). Other advertisements in the record include: "Imdrin * * * not only stops pain, helps reduce swelling, but acts to uncork the joints" (R. 735). "Users of Imdrin report that they have resumed normal living. For them the aching joints and muscles are a thing of the past" (R. 736). "* * * Imdrin, the brand-new, safe and reliable way to cure pain that is being prescribed by many doctors to bring quick, blessed relief from arthritic pain, stiffness and swelling" (R. 735).

of occupation, physiotherapy, surgery, and medication (Par. Seven, R. 956). Delay of needed treatment may result in irreparable crippling (*ibid.*)

Imdrin will not constitute an adequate, effective, or reliable treatment or cure for any arthritic or rheumatic conditions; will have no significant effect upon severe aches, pains, and discomforts accompanying such conditions; will afford temporary and partial relief of only minor aches, pains, and discomforts; and, except for such temporary and partial relief, cannot be depended upon to have any effect whatever upon the symptoms accompanying any arthritic or rheumatic conditions (Par. Nine, R. 957-958).

In an accompanying opinion, the Commission stated that the greater weight of the expert medical testimony was that the only ingredients in Imdrin, when taken as directed, which have any significant beneficial effect are the salicylates (R. 962, 963-964); that such salicylates have no therapeutic value in the treatment of arthritic or rheumatic conditions, and have no beneficial effect upon the symptoms thereof other than to afford temporary and partial relief from less severe pains and fever (R. 962); that, according to the unanimous expert medical testimony, the salicylates contained in the prescribed daily dosage of Imdrin are insufficient to relieve the most severe arthritic and rheumatic pains, and, according to the greater weight of such testimony, are inadequate for complete relief from pains acompanying an average case (R. 963-964).

The Commission's cease-and-desist order contains six substantive subparagraphs. Paragraph 1 (c), the provision involved in this case, enjoins respondents from representing in any advertisement that Imdrin—

> . . . will afford any relief of severe aches, pains, and discomforts of neuritis, sciatica, gout, neuralgia, fibrositis, bursitis, or any other arthritic or rheumatic condition, or have any therapeutic effect upon any of the symptoms or manifestations of any such condition in excess of affording temporary and partial relief of minor aches, pains, or fever [R. 959].

The Court of Appeals, holding that the Commission's findings were supported by substantial evidence (R. 979), affirmed and enforced five paragraphs of the order,[4] but modified paragraph 1 (c) so that it would prohibit representing that Imdrin—

> . . . will afford any permanent relief of aches, pains, and discomforts of neuritis, sciatica, gout, neuralgia, fibrositis, bursitis, or any other arthritic or rheumatic condition, or effect a cure of the symptoms or manifestations of any such condition [R. 981].

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[4] These paragraphs prohibit representing that Imdrin is an adequate, effective, or reliable treatment for, or will arrest the progress or correct the underlying causes of, any arthritic or rheumatic condition (Pars. 1(a), 1(b)); that it is a new, remarkable, or sensational discovery (Par. 1(d)); that it will enable severely afflicted persons to resume normal living habits or occupations (Par. 1(e)); or that it will have any therapeutic effect upon the enzyme systems (Par. 1(f)) (R. 959).

In making this modification, the court stated that Commission orders must not be "indefinite or ambiguous," and referred to two prior decisions [5] in which it had eliminated the word "temporary" from Commission orders relating to drug advertising upon the ground that this word "carries an uncertain meaning" (R. 979-980). The court further stated that it was "overwhelmingly established" that Imdrin affords relief for the pain and discomfort incident to many rheumatic and arthritic conditions, that the duration of such relief varied with the individual who used the drug, and that the five sections of the order which the court approved "will very largely correct the misleading and deceptive representations which petitioners have made in their advertisements" (R. 980).

SPECIFICATION OF ERRORS TO BE URGED

The court of appeals erred:

1. In modifying paragraph 1(c) of the Commission's cease-and-desist order by rewriting it so as to change substantially the scope of its prohibitions, thereby permitting respondents to continue making representations which the Commission found to be false.

2. In holding that the word "temporary," as applied to the relief given by respondents' product, rendered paragraph 1(c) ambiguous or uncertain.

3. In failing to affirm and enforce paragraph 1(c).

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[5] *D.D.D. Corp.* v. *Federal Trade Commission*, 125 F. 2d 679, 682 (C.A. 7); *Carter Products, Inc.* v. *Federal Trade Commission*, 186 F. 2d 821, 826 (C.A. 7).

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REASONS FOR GRANTING THE WRIT

1. The Commission's order in this case was designed to prohibit serious misrepresentations in the public health field. The Court of Appeals, although sustaining the Commission's findings that respondents' representations were false, nevertheless rewrote the order in a way that had the effect of substantially narrowing the scope of the Commission's prohibitions, thereby permitting respondents to continue to make a number of these misleading claims. In so doing, we submit, the court exceeded its review powers under the Act.

As decisions of this Court make clear (*infra*, pp. 12-14), the reviewing court's power to modify a Commission order does not authorize the court to substitute its judgment for that of the agency as to the precise scope of relief necessary to protect the public from a recurrence of the violations shown. The question whether a reviewing court possesses the power which the court below purported to exercise is a recurring one in this field and important to all Federal administrative agencies.

The impact of the decision below on the public welfare is particularly serious in the instant case because the Commission's order dealt with an important matter of public health: the elimination of serious misrepresentations as to the therapeutic effectiveness of a drug which had been extensively advertised as a treatment for rheumatism and arthritis. The Court of Appeals modified the only paragraph of the Commission's order which deals with false representations as to relief from pain and discomfort. Under this modification, respond-

ents remain free to continue selling their product by making false claims as to its efficacy in relieving such symptoms. Misrepresentations that a drug will relieve severe arthritic and rheumatic pains, and ameliorate the stiffness and swelling which characteristically accompany the diseases—both of which the modified order permits (see *infra*, pp. 11-12),—obviously will have a strong sales appeal for the approximately seven million people in this country who suffer from the diseases.[6] And delay in obtaining necessary medical treatment of these conditions because of reliance on the claimed therapeutic properties of such a drug may, as the Commission found, result in irreparable crippling.

Finally, it should be noted that the Commission has instituted proceedings against five manufacturers of similar drugs, charging comparable misrepresentations in selling their products,[7] and that in one of them a stipulation has been filed that the

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[6] A 1938 study by the United States Public Health Service estimated that there were 6,850,000 cases of rheumatic diseases in the United States. *Primer on the Rheumatic Diseases*, 152 Journal of the American Medical Association, 323, 324. A recent Public Health survey indicated that in 1951 the number of sufferers probably was even greater. Woolsey, *Prevalence of Arthritis and Rheumatism in the United States*, 67 Public Health Reports, 505, 507-508.

[7] *Reliance Pharmacal Company*, Docket 5712 ("Artex"); *Norlon Corporation*, Docket 5741 ("Sural"); *Pruvo Pharmacal Company*, Docket 5778 ("Pruvo"); *Kordal Corporation*, Docket 6088 ("Kordolin"). In *Dolcin Corporation*, Docket 5692 ("Dolcin"), petition to review pending *sub nom. Dolcin Corporation* v. *Federal Trade Commission*, C.A. D.C., No. 11,700, the Commission issued a cease-and-desist order, one of whose provisions is substantially identical to paragraph 1(c) of the order in the instant case.

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final order is to be identical with the order in the instant case.[8]

2. The Court of Appeals modified the order because it deemed the adjective "temporary," when applied to the relief from pain and discomfort by Imdrin, to have an uncertain meaning. But the court did not restrict itself to eliminating the objectionable language—either by excision or appropriate rewriting—but instead substituted a different provision which substantially narrowed the scope of the Commission's prohibitions.

The Commission's order—which was based upon findings (accepted by the court) that Imdrin has *no* significant effect upon *severe* arthritic and rheumatic pains and discomforts, and gives only *temporary* and *partial* relief from *minor* pains and discomforts thereof—enjoined respondents from representing that the drug would relieve severe pains, or would have any therapeutic effect other than to give temporary and partial relief of minor aches, pains, and fever. As modified by the Court of Appeals, however, the order merely prohibits respondents from representing that Imdrin will *permanently* relieve pain, or that it will *cure* arthritic or rheumatic symptoms or manifestations. Respondents thus may continue to represent (1) that Imdrin will temporarily relieve severe pains and discomforts, and (2) that it will stop or relieve swelling or stiff joints, despite the court's acceptance of the Commission's findings that such representa-

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[8] *Pruvo Pharmacal Company, supra,* note 7.

tions are false. Indeed, respondents may make any misrepresentations respecting the extent of the relief given by Imdrin, as long as they stop short of alleging that it is permanent. They may call it "extended," "substantial," or any other misleading adjective they select. The court's modification of the order is thus inconsistent with its own acceptance of the Commission's findings.

Section 5(c) of the Federal Trade Commission Act authorizes the courts of appeals to modify, as well as to affirm or reverse, orders of the Commission, and the power to modify extends to the remedy. *Jacob Siegel Co.* v. *Federal Trade Commission*, 327 U. S. 608, 611. But "[t]he Commission has wide discretion in its choice of a remedy deemed adequate to cope with the unlawful practices" disclosed by the record, and "judicial review is limited * * * to ascertain[ing] whether the Commission made an allowable judgment in its choice of the remedy * * *. [The Commission] has wide latitude for judgment and the courts will not interfere except where the remedy selected has no reasonable relation to the unlawful practices found to exist." *Ibid.*, 612-613; *Federal Trade Commission* v. *Ruberoid Co.*, 343 U. S. 470, 473.

The reviewing court has no power to rewrite the Commission's order to reflect its own view as to what an appropriate remedy would be. Cf. *American Power & Light Co.* v. *Securities and Exchange Commission*, 329 U. S. 90, 118. But the court below, in modifying paragraph 1(c), did precisely that. The decision thus conflicts with the principle established in applicable decisions of this Court

that the reviewing court's function is limited to ascertaining "whether the Commission made an allowable judgment in its choice of the remedy * * *."

That the court was substituting its judgment for that of the agency as to remedy is further shown by the court's statement that the five subparagraphs of the order which it approved and enforced "will very largely correct the misleading and deceptive representations which petitioners have made in their advertisements" (R. 980). This statement would seem to indicate that, in the court's view, the prohibitions in paragraph 1(c) are of little significance. The five other subparagraphs, however, do not prohibit the misrepresentations as to relief from pain, stiffness and swelling, which paragraph 1(c) was designed to prevent (see *supra*, p. 7, fn. 4), and the latter misrepresentations are particularly serious. "* * * courts should be reluctant to emasculate a remedial order by striking out its more dynamic and practically effective parts while they affirm the Commission's proceedings as a whole." *Charles of the Ritz Distributors Corp.* v. *Federal Trade Commission*, 143 F. 2d 676, 680 (C. A. 2).

Paragraph 1(c), as drawn by the Commission, was designed to protect the public from misrepresentations as to relief from pain and discomfort shown by the record, and clearly was justified by the Commission's findings. Cf. *National Labor Relations Board* v. *Express Publishing Co.*, 312 U. S. 426. It represented a sound exercise of the

Commission's broad discretion to fashion a remedy appropriate "to cope with the unlawful practices." *Siegel* case, *supra;* cf. *National Labor Relations Board* v. *Gullett Gin Co.,* 340 U. S. 361, 362-363. Even assuming *arguendo* that some modification of the order was proper—a point which we dispute (see *infra,* pp. 14-15)—the court was not authorized to "exercise an essentially administrative function" by revising the remedy selected by the Commission to conform to its own views as to the measure of protection which the public interest requires. *Federal Power Commission* v. *Idaho Power Co.,* 344 U. S. 17, 21.[9] The reviewing court "may not disturb the measure of relief which the administrative tribunal thinks necessary." *Deer* v. *Federal Trade Commission,* 152 F. 2d 65, 67 (C. A. 2).

3. Thus far, we have assumed *arguendo* that the court below correctly held that the adjective "temporary" is ambiguous or uncertain. We submit, however, that this word did not render the Commission's order vague or indefinite, and that the Court of Appeals erred in holding that modification of the order was necessary.

The Commission found, and the court sustained the finding, that at most Imdrin gives only temporary relief from the pain and discomfort of mild rheumatic and arthritic conditions. While a number of expert medical witnesses testified that Imdrin would give "temporary" relief (e.g., R. 284,

[9] If the contemplated modification would result in a substantial change in the Commission's prohibitions, the court should remand the matter to the agency for reconsideration. *Federal Power Commission* v. *Idaho Power Co.,* 344 U.S. 17, 20-21; *Federal Trade Commission* v. *Morton Salt Co.,* 334 U.S. 37, 55.

309-320, 438-439), the only one who defined the term stated that he used it to mean from "a few minutes" to "at the longest an hour" (R. 283). Thus, the Commission could have prohibited respondents from advertising that Imdrin would give relief for more than an hour. *Federal Trade Commission* v. *Ruberoid Co.*, 343 U. S. 470. Instead, however, the Commission left respondents free to formulate their own language to reflect the limited relief which their product gives.[10] This was well within the Commission's "wide discretion in its choice of a remedy deemed adequate to cope with the unlawful practices." *Siegel* case, *supra*. "The order is not bound to chart a course for the petitioner. The petitioner can have no doubt of the evils complained of and sought to be corrected." *Zenith Radio Corp.* v. *Federal Trade Commission*, 143 F. 2d 29, 31 (C. A. 7). The specificity required of an order depends upon the particular evils at which it is directed, and the word "temporary" is appropriate to describe the only relief which Imdrin was found to provide.[11]

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[10] They may, of course, use the word "temporary," although the Commission's order does not require them to do so.

[11] In holding that the word "temporary" is uncertain, the Court of Appeals relied on two prior cases in which it had eliminated the word from Commission orders relating to the relief given by certain medicinal preparations. *D.D.D. Corp.* v. *Federal Trade Commission*, 125 F. 2d 679, 682; *Carter Products, Inc.* v. *Federal Trade Commission*, 186 F. 2d 821, 826. In the *Carter* case, however, the expert testimony was that the effectiveness of a deodorant might vary from 3 to 24 hours. In an intervening case, *Sebrone Co.* v. *Federal Trade Commission*, 135 F. 2d 676, 679, the same court sustained a Commission order prohibiting representations that products would provide more than temporary relief from dandruff or body odor.

CONCLUSION

The decision below is in conflict with principles established in applicable decisions of this Court and other courts of appeals, and involves important questions of Federal law. The petition for a writ of certiorari should be granted.

Respectfully submitted,

SIMON E. SOBELOFF,
Solicitor General.

EARL W. KINTNER,
General Counsel,
Federal Trade Commission.

MAY, 1954.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1954 [illegible]

In the Supreme Court of the United States

OCTOBER TERM, 1954

No. 80

FEDERAL TRADE COMMISSION, PETITIONER

v.

RHODES PHARMACAL COMPANY, INC., ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

MEMORANDUM IN REPLY TO RESPONDENTS' BRIEF IN OPPOSITION

In their brief in opposition, respondents argue (1) that there are no "special and important reasons" for granting the writ, since review of the decision below will not contribute to the clarification of the admittedly important question of the permissible scope of review of Commission orders; (2) that a reviewing court has power to modify a Commission order, even though it affirms the Commission's findings; (3) that the court below did not rewrite the order so as to substitute its judgment

as to remedy for that of the Commission; and (4) that the order was so ambiguous as to require modification. We do not disagree with the second point as a general principle, and we have fully discussed the first and fourth points in our petition (pp. 9-11, 14-15). In this brief we will discuss only the third point, namely, whether the court of appeals exceeded the permissible scope of judicial review of Commission orders.[1]

Respondents contend (Br. in Opp., pp. 18, 20) that the changes which the court made in the order did no more than substitute a prohibition against representing that Imdrin would afford "permanent" relief from pain for the provision in the original order requiring respondents to specify that such relief is "temporary," and that such change was "necessary to eliminate the ambiguity and to give effect to the Court's criticism of the Commission's action." If the court's modification had done no more than eliminate the alleged ambiguity, we would not be seeking certiorari. The fact of the matter is, however, that the changes made by the court substantially altered the measure of the relief which the Commission had found necessary to protect the public against respondents' misrepresentations.

As we pointed out in our petition (pp. 11-12), the

[1] We note in passing, however, that respondents' contention that the public health aspects of this case are "indirect, remote and conjectural" (Br. in Opp., p. 6) ignores the Commission's finding (Par. Seven, R. 956) that delay in obtaining necessary medical treatment of arthritis or rheumatism may result in irreparable crippling.

original order prohibited respondents from advertising that Imdrin will have any effect upon severe pains and discomforts, or that it will stop or relieve swelling or stiff joints. Under the terms of the modified order, however, respondents are free to continue making these misrepresentations. And the court made such modification even though it sustained the Commission's findings that such statements are false. This case, therefore, is quite different from *Federal Trade Commission* v. *Royal Milling Co.*, 288 U. S. 212, and *Jacob Siegel Co.* v. *Federal Trade Commission*, 327 U. S. 608, upon which respondents rely, since in those cases the issue was whether some less drastic remedy would suffice to correct the misrepresentations, not whether the misrepresentations should be allowed to continue. Here the issue is whether, if a court affirms Commission findings that certain representations are false, it can nevertheless modify the order so as to permit continuation of those very misrepresentations.

Respondents cite the recent decision in *Dolcin Corporation* v. *Federal Trade Commission* (C. A. D. C., No. 11,700, July 1, 1954) in support of the modifications made in the instant order (Br. in Opp., pp. 6-7, 21-22). We submit, however, that the *Dolcin* case dramatizes the problem of this case and actually supports our position. Dolcin, like Imdrin, is used to treat arthritis and rheumatism, and the two drugs have substantially the same active ingredients. The Commission's order in the *Dolcin* case contains a provision virtually identical

with the provision involved in the instant case (Br. in Opp., pp. 25-26). The modifications made by the court in the *Dolcin* case, however, do not change the substance of the order, but merely remove certain ambiguities. Thus, the modified order in that case specifically enjoins representations that Dolcin will "afford significant relief of severe aches, pains and discomforts [of arthritis and rheumatism] * * * or have any therapeutic effect upon any of the symptoms or manifestations of any such condition [i. e., stiffness and swelling] in excess of affording relief of aches, pains or fever within the foregoing limits" (Br. in Opp., pp. 26-27).

The *Dolcin* case points up the distinction between a modification which merely cures an ambiguity but does not change the substance of the order, and a modification which produces a different order. The modification in the instant case is in the latter category, and is beyond the power of the court of appeals. And the practical result of the two cases is that, although the two drugs have substantially identical therapeutic properties, the manufacturers of Imdrin can continue to make misrepresentations which the manufacturers of Dolcin are properly prohibited from making.

It is respectfully submitted that the petition for a writ of certiorari should be granted.

SIMON E. SOBELOFF,
Solicitor General.

AUGUST, 1954.

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In the Supreme Court of the United States

OCTOBER TERM, 1954

No. 80

FEDERAL TRADE COMMISSION, PETITIONER

v.

RHODES PHARMACAL COMPANY, INC., ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE FEDERAL TRADE COMMISSION

OPINION BELOW

The opinion of the Court of Appeals (R. 973) is reported at 208 F. 2d 382.

JURISDICTION

The judgment of the Court of Appeals was entered on November 3, 1953 (R. 980), and a timely petition for rehearing (R. 981) was denied on January 5, 1954 (R. 989). The time for filing a petition for a writ of certiorari was extended by Mr. Justice Jackson on March 23, 1954, to May 18, 1954 (R. 999). The petition for a writ of certiorari

was filed on May 17, 1954, and was granted on October 14, 1954. The jurisdiction of this Court is conferred by 28 U. S. C. 1254(1).

QUESTIONS PRESENTED

1. Whether the court of appeals erred in modifying as indefinite or ambiguous an order of the Federal Trade Commission, based on findings which the court sustained, which prohibited representations that a preparation had any therapeutic effect in excess of affording "temporary and partial" relief of minor aches, pains, and fever.

2. Whether, if some modification of the order was warranted in order to make its requirements more definite, the court of appeals erred in rewriting the order in a way that permitted respondents to continue to make representations as to the worth of their product which the Commission had found to be false.

STATUTE INVOLVED

Section 5 of the Federal Trade Commission Act, 38 Stat. 717, as amended by the Act of March 21, 1938, 52 Stat. 111, 15 U. S. C. 45, provides in part as follows:

> (a) Unfair methods of competition in commerce, and unfair or deceptive acts or practices in commerce, are hereby declared unlawful.
>
> The Commission is hereby empowered and directed to prevent persons, partnerships, or corporations * * * from using unfair

methods of competition in commerce and unfair or deceptive acts or practices in commerce.

* * * * *

(c) Any person, partnership, or corporation required by an order of the Commission to cease and desist from using any method of competition or act or practice may obtain a review of such order in the circuit court of appeals of the United States, within any circuit where the method of competition or the act or practice in question was used or where such person, partnership, or corporation resides or carries on business, by filing in the court, within sixty days from the date of the service of such order, a written petition praying that the order of the Commission be set aside. * * * Upon such filing of the petition and transcript the court shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to make and enter upon the pleadings, evidence, and proceedings set forth in such transcript, a decree affirming, modifying, or setting aside the order of the Commission, and enforcing the same to the extent that such order is affirmed * * *.

STATEMENT

In August 1949, the Federal Trade Commission issued a complaint (R. 2-8), charging that respondents had engaged in unfair and deceptive acts and

practices in commerce by disseminating false advertisements in connection with the sale of the drug Imdrin as a treatment for rheumatism and arthritis. After extensive administrative proceedings, unchallenged as to regularity, the Commission in October, 1952, issued its findings and opinion holding that respondents had engaged in such acts and practices, and entered a cease-and-desist order.

On petition for review, the Court of Appeals for the Seventh Circuit sustained the findings of the Commission as based on substantial evidence, and affirmed and enforced the Commission's order with the exception of paragraph 1(c) thereof, which it modified. The issues before this Court concern only the validity of these modifications. Respondents did not cross-petition for certiorari.

The facts are summarized below in order to give the context in which the issues before this Court arise.

Respondents advertised Imdrin extensively in newspapers and over the radio (Comm. Exs. 1-32, 37, R. 735-765). Among advertisements which the Commission described as typical (R. 949-951) were ones which contained statements in large bold type such as "Amazing New Discovery for Rheumatism, Arthritis" "No Faster Arthritis Pain Relief Known" "Hospital Tested. Stops Swelling, Uncorks Joints, Contains Sensational New Research Discovery" (R. 949) "Resume Confident, Pain-Free Living With Amazing New * * * Imdrin" (E.g., Comm. Ex. 15, R. 746). These newspaper and radio advertisements included such statements as:

If the agony of rheumatic and arthritic pains have been getting you down—if you are racked twenty-four hours a day by torturing aches, beset by swelling, and stiffness—then you know how such conditions can make your job seem twice as hard as it really is. * * * If these unendurable aches and pains are due to rheumatism, start now using safe new Imdrin for quick relief! (Pause) You've read about the wonders of sulfa and penicillin! But you may never before have heard about I-m-d-r-i-n, the brand-new, safe and reliable way to curb pain that is being prescribed by many doctors to bring quick, blessed relief from arthritic pain, stiffness and swelling. Imdrin contains a remarkable research discovery! . . . that not only stops pain, helps reduce swelling, but acts to help uncork the joints! [Comm. Ex. 5, R. 737.]

If you have been suffering tortures of rheumatic and arthritic pains, for days, months, or even years, Imdrin with its amazing new wonder-working ingredient may very well be the answer to your problem of pain-free living . . . Even people who suffered for twenty years were able to live free of pain . . . like happy human beings once again. [Comm. Ex. 8, R. 739.]

Insist on Imdrin for prolonged relief from the pains of arthritis, rheumatism, sciatica, and neuritis [Comm. Ex. 4, R. 737].

Imdrin gives prompt, efficacious, and long-lasting relief [Comm. Ex. 31, R. 763].

The Commission found[1] that "arthritis" and "rheumatism" are general terms, sometimes used interchangeably, which refer to any of a number of diseases or pathological conditions which are characterized by one or more of such symptoms or manifestations as pain, stiffness, and inflammatory and destructive changes in the joints and tissues of the body (Par. Five, R. 954).[2] There is no drug, or combination of drugs, which is an adequate, effective, or reliable treatment for any of the various forms of arthritis or rheumatism (Par. Seven, R. 956). The various forms of these diseases progress and develop differently, and they require different treatment, which varies between different types of such ailments, different individuals suffering from the same ailment, and different stages in the progress thereof (Par. Six, R. 956). Adequate, effective, or reliable treatment for these diseases must be predicated on individual diagnosis, which may require a number of different medical determinations (*ibid.*), and may involve various therapeutic measures, including diet, rest or change of occupation, various types of physiotherapy, surgery, and medication (Par. Seven, R. 956). Delay of needed treatment may result in irreparable crippling (*ibid.*).

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[1] The Commission sustained the findings of the examiner (R. 965).

[2] Among the forms of arthritis and rheumatism are neuritis, sciatica, neuralgia, gout, fibrositis, bursitis, rheumatoid arthritis, osteoarthritis, rheumatic fever, and infectious arthritis (Par. Five, R. 954). One of the expert medical witnesses stated (R. 245) that there are "800 or even more different kinds of rheumatism."

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The Commission further found that the only ingredients of Imdrin, when taken as directed, which have any significant beneficial effect are manganese salicylate and acetylsalicylic acid (commonly called aspirin), the use and effect of which as analgesics and antipyretics has been known for many years (Par. Eight, R. 957). Imdrin, however taken, will not constitute an adequate, effective, or reliable treatment for, arrest the progress or correct the underlying causes of, or cure any arthritic or rheumatic condition; will not ameliorate the aches, pains, and discomfort of any such condition to any extent beyond the temporary and partial relief afforded by its salicylate content as an analgesic and antipyretic; will have no significant effect upon severe aches, pains, and discomforts accompanying such conditions; will afford temporary and partial relief of only minor aches, pains, and discomforts; and, except for such temporary and partial relief, cannot be depended upon to have any effect whatever upon the symptoms accompanying any arthritic or rheumatic condition (Par. Nine, R. 957-958).

The Commission's findings as to the relief from pain afforded by Indrim, which bore out specific allegations in the same terms set forth in the complaint (Par. Four (C)(4), R. 5-6), were based upon the uncontradicted testimony of three of the Commission's expert medical witnesses that Imdrin would provide only "temporary" relief for the various types of arthritis and rheumatism. (Dr. Rosenberg: R. 202, 205, 206, 207, 210, 211;

cf. 218-219. Dr. Barton: R. 255, 257, 258, 261, 263-264, 265, 268. Dr. Wolpaw: R. 309, 310, 311, 312, 314, 316, 317, 318, 320.) Dr. Barton, the only one of the witnesses who defined the term, stated that he used it to mean "a matter of perhaps a few minutes, at the longest an hour, perhaps less" (R. 283), and that the relief which Imdrin would give "conceivably could be up to an hour" (R. 284). Similarly, the Commission's expert medical witnesses, as well as the medical witnesses produced by respondents, all testified that, except in severe cases where it had no effect, Imdrin could be expected to give partial relief or some measure of relief, but that it would not give complete relief. (Dr. Rosenberg: R. 219. Dr. Barton: R. 255. Dr. Wolpaw: R. 309-310. Dr. Weisberg: R. 358. Dr. Black: R. 407.) With respect to the most common form of arthritis, which was described as not a "serious condition" and was commonly self-treated, Dr. Black, one of respondents' medical witnesses, when asked on direct examination whether 20.4 grains of salicylates per day (the dosage recommended for Imdrin) "would tend to diminish the pain and discomforts," testified that this "would be somewhat helpful" (R. 406-407).

In an opinion accompanying its order (R. 960-965), the Commission reviewed the evidence bearing on the beneficial effects of Imdrin and rejected respondents' contention that its order should not prohibit them from claiming that Imdrin afforded in excess of "temporary" relief. The Commission held that such a limitation was necessary in this

case to avoid real danger of deception. It further considered the requirement proper, as against the contention that it is indefinite, since the preparation provides only temporary symptomatic relief and the requirement could be satisfied by any representation showing that lasting relief is not claimed (R. 964-965).

The Commission's cease-and-desist order (R. 958-959) prohibits representation that Imdrin is an adequate, effective, or reliable treatment for, will arrest the progress or correct the underlying causes of, or will cure, any arthritic or rheumatic condition (Pars. 1(a), 1(b)); that it is a new or sensational discovery, or is remarkable, amazing, or sensational (Par. 1(d)); that it will enable severely afflicted persons to resume normal living habits or regular occupations (Par. 1(e)); or that it will have any therapeutic effect upon the functioning of enzyme systems of the blood or bones (Par. 1(f)). These paragraphs of the order are not in issue.

In addition, the order contained a paragraph 1(*e*) which prohibited representations that Imdrin (R. 979):

> . . . will afford any relief of severe aches, pains, and discomforts of neuritis, sciatica, gout, neuralgia, fibrositis, bursitis, or any other arthritic or rheumatic condition, or have any therapeutic effect upon any of the symptoms or manifestations of any such condition in excess of affording temporary and partial relief of minor aches, pains, or fever.

The court of appeals struck this paragraph from the order and inserted in its place a paragraph prohibiting representation that Imdrin (R. 981):

> . . . will afford any permanent relief of aches, pains, and discomforts of neuritis, sciatica, gout, neuralgia, fibrositis, bursitis, or any other arthritic or rheumatic condition, or effect a cure of the symptoms or manifestations of any such condition.

In making this modification, the court stated that Commission orders must not be "indefinite or ambiguous," and referred to two prior decisions[3] in which it had eliminated the word "temporary" from Commission orders relating to drug advertising upon the ground that this word "carries an uncertain meaning" (R. 979-980). The court further

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[3] *D. D. C. Corp.* v. *Federal Trade Commission*, 125 F. 2d 679, 682 (C.A. 7); *Carter Products, Inc.* v. *Federal Trade Commission*, 186 F. 2d 821, 826 (C.A. 7).

stated that it was overwhelmingly established that Imdrin affords relief for the pain and discomfort incident to many rheumatic and arthritic conditions, that the duration of such relief varied with the individual who used the drug, and that the five sections of the order which the court approved "will very largely correct the misleading and deceptive representations which [respondents] have made in their advertisements" (R. 980).

The Commission filed a timely petition for rehearing seeking reconsideration of the revision of paragraph 1(c) ordered by the court of appeals (R. 982-984) which was denied (R. 989).

SUMMARY OF ARGUMENT

I

The word temporary" as used by the Commission to limit representations as to the relief afforded by Imdrin was not in the context of this case so vague and indefinite as to require its elimination from the Commission's order. Respondents repeatedly represented in their advertising that Imdrin afforded "prolonged," "long-lasting," or permanent relief, whereas the Commission alleged, and after extensive hearings found, that the relief, if any, afforded by Imdrin was "temporary and partial." The court of appeals expressly sustained these findings as based on substantial evidence. While the terms "temporary" and "partial" are relative in meaning, they are the terms used by the Commission's medical experts to describe the effect

of Imdrin, which all agreed varied according to the individual and the specific complaint involved.

Most adjectives are relative and gain meaning from their context. The terms in question become indefinite only when one attempts to come as close to the line of misrepresentation as the Commission will permit. "Temporary" does not convey the same meaning as "less than permanent." There is a middle area of representation, connoting a period of duration that is more than temporary and less than permanent. The contrast between words like "temporary" connoting short duration and words like "prolonged" and "long-lasting" connoting long duration is not hairsplitting, but a basic and well recognized contrast of relative terms which are the only terms that adequately convey the meaning intended to be conveyed.

The use of relative terms in Commission orders, which are as specific and meaningful as words can be, has been proscribed neither by Congress nor the courts. The courts of appeals have repeatedly sustained orders containing such relative terms as "temporary," "substantial," "slight," "severe," etc., in situations where, as here, the person subject to the order can have no doubt of the evils complained of and sought to be corrected. In short, the order as entered by the Commission meets the requirement that it "state with reasonable specificity the acts which the respondent is to do or refrain from doing." *National Labor Relations Board* v. *Express Publishing Co.*, 312 U.S. 426, 433. The rule itself speaks in terms of "reasonable" specificity, for the requirement of certainty itself is

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relative and will not be permitted to obstruct the fashioning of an order adequate to cope with the unlawful practices found to exist. Any other rule, imposing a requirement of unattainable absolute certainty, would only have the effect of immunizing certain types of misrepresentations from effective administrative control, and thus defeat the purposes of Congress in enacting the Act.

II

Even if some modification of the order was warranted in order to make its requirements more definite, the court of appeals erred in rewriting the order in a way which had the effect of substantially reducing the scope of relief prescribed by the Commission. Under the order as modified, respondents may continue to represent:

> (a) that Imdrin will relieve severe aches, pains, and discomforts;
>
> (b) that Imdrin affords prolonged or long-lasting relief; and
>
> (c) that Indrim will relieve symptoms or manifestations of arthritic or rheumatic conditions other than pain, such as stiffness, swelling, or limitation of motion.

These are the sort of representations respondents made in the past, which the Commission found were false, and the court below explicitly sustained its findings as based on substantial evidence.

Under the statutory scheme, the fashioning of the remedy is a matter entrusted to the Commis-

sion, which "has wide discretion in its choice of a remedy deemed adequate to cope with the unlawful practices" shown by the record. *Jacob Siegel Co. v. Federal Trade Commission*, 327 U. S. 608, 611. While the reviewing court has the power to modify an order of the Commission, "judicial review is limited . . . to ascertain[ing] whether the Commission made an allowable judgment in its choice of the remedy. . . . [The] courts will not interfere except where the remedy selected has no reasonable relation to the unlawful practices found to exist." *Id.* at 612-613. Patently the Commission's order had a "reasonable relation to the unlawful practices found to exist"; in plain terms it prohibited those very practices.

We agree with respondents that Commission orders must not be unduly drastic, harsh, and burdensome. But respondents have no standing to complain where the order prohibits only representations precisely like those made by respondents in the past which the Commission found were false, and where respondents lose only their freedom to continue to misrepresent the worth of their product.

The facts of this case particularly command application of the rule prohibiting a reviewing court from substituting its judgment as to remedy for that of the Commission. The order dealt with misrepresentations in advertising, the prohibition of which was of peculiar importance to the public health. Misrepresentations that Imdrin will ameliorate stiffness and swelling and afford more than

temporary and partial relief from pain will have a strong sales appeal for the approximately seven million people who suffer from one of the myriad forms of arthritis and rheumatism. Such representations to the extent that they succeed in exciting false hopes in the hearts of the afflicted, with the result that they put off seeing a doctor and delay obtaining proper medical treatment, may, as the Commission found, "result in irreparable crippling".

The court below erred in failing to follow the principle established in the applicable decisions of this Court that the reviewing courts function is limited to ascertaining whether the Commission, as we think it clearly did, made an allowable judgment in its choice of remedy.

ARGUMENT

I

The Word "Temporary" in the Context of This Case Was Not So Indefinite or Ambiguous as to Require Its Elimination from the Commission's Order

Paragraph 1(c) of the Commission's order (R. 959) prohibited representations that Imdrin would "afford any relief of severe aches, pains, or discomforts" or would have any therapeutic effect on the symptoms of any arthritic or rheumatic condition "in excess of affording temporary and partial relief of minor aches, pains, or fever." The court below held that use of the word temporary in this provision was improper in that the word "car-

ries an uncertain meaning" and renders the order ambiguous. (R. 979-980.)

Respondents repeatedly represented in their advertising that Imdrin would give "prolonged",[4] "long-lasting",[5] or permanent relief.[6] The Commission charged (R. 6), and after extensive hearings found, that Imdrin afforded no significant relief of severe pains and that its effect was limited to "temporary and partial" relief of minor pains (R. 958). The court of appeals summarized the Commission's findings by stating "that Imdrin, however taken, will not ameliorate the aches, pains and discomforts of any arthritic or rheumatic condition to any extent beyond the temporary and partial relief thereof afforded by its salicylate content" and "has no significant effect on severe aches, pains", etc., and further held that these findings "are supported by substantial evidence" (R. 976, 979). Thus the prohibitions of paragraph 1(c), as entered by the Commission, find abundant support in the Commission's findings which were sustained by the court below. These findings are controlling and are not open to attack here inasmuch as re-

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[4] *E.g.*, Comm. Ex. 4, R. 737: "Insist on Imdrin for prolonged relief from the pains of arthritis, rheumatism, sciatica, and neuritis." To the same effect, see Comm. Ex. 3, R. 736; Comm. Ex. 6, R. 738; Comm. Ex. 7, R. 738.

[5] *E.g.*, Comm. Ex. 31, R. 763: banner heading "Fast long-lasting relief," followed by text, "It will be found that Imdrin gives prompt, efficacious, and long-lasting relief." See also Comm. Ex. 37, R. 765.

[6] *E.g.*, Comm. Ex. 1, R. 735: "Imdrin . . . the brand new, safe and reliable way to cure pain." Comm. Ex. 10, R. 741: "Resume confident pain-free living with amazing new Imdrin."

spondents have not cross-petitioned for certiorari. *National Labor Relations Board* v. *Express Publishing Co.*, 312 U.S. 426, 431.

While the terms "temporary and partial" are relative, they are the terms used by the Commission's medical experts and obviously were considered by them to be apt and meaningful terms to describe the effect of Imdrin which all the witnesses agreed varied according to the individual and the specific complaint involved.

Most adjectives are relative and gain meaning from the context in which they are used. In the context of this order and in the light of the testimony adduced at the hearing, respondents can have no real doubt as to the meaning of the words used by the Commission. Paragraph 1(c) of the order is simple and unambiguous. Respondents can comply by "merely being accurately true in [their] advertisements," *Edward P. Paul & Co.* v. *Federal Trade Commission*, 169 F. 2d 294, 296 (C. A. D. C.), *i.e.*, by representing that Imdrin will give only "temporary and partial" relief. The fact that it may be difficult for respondents to determine whether more extravagant claims would run afoul of the Commission's prohibition is no reason to invalidate the order. The terms in question become indefinite "only when one attempts to come as close to the line of misrepresentation as the Commission will permit." *Id.* at 296.

"Temporary" does not convey the same meaning as "less than permanent". There is a middle area of representation, connoting a period of duration

that is more than temporary but less than permanent. *Webster lists, as antonyms of "temporary,"* the words "permanent" and "enduring." The latter provides the appropriate reference. The meaning to be conveyed is that associated with relatively short but inherently indefinite duration. Roget, with reference to the problem of indicating indefinite duration, sets forth two major classifications, No. 110 containing words like "prolonged," connoting *long* duration, and No. 111 containing words like "temporary," connoting *short* duration. Thus the contrast between "temporary" on the one hand, and more than temporary while less than permanent on the other, is not "hairsplitting" (Br. in Opp. 18), but a basic and well-recognized contrast of relative terms which are the only terms which adequately convey the meaning which is intended to be conveyed. One of the important purposes of the Commission's order in this case is to protect the public from continuing exposure to the customer-seducing claim that the relief afforded by Imdrin, although it may not be permanent, is more than temporary.

The use of relative terms in Commission orders, which are as specific and meaningful as words can be, has been proscribed neither by Congress nor the courts. On the contrary, the courts of appeals, including the court below, have repeatedly sustained orders containing such relative terms as

"temporary,"[7] "substantial,"[8] "slight,"[9] "simi-

[7] See *Fairyfoot Products Co.* v. *Federal Trade Commission*, 80 F. 2d 684, 685 (C.A. 7) (representation that a bunion remedy has any effect other than that derived from a mechanical device which "temporarily relieves pain"); *Dr. W. B. Caldwell, Inc.* v. *Federal Trade Commission*, 111 F. 2d 889 (C.A. 7) (for order see 28 F.T.C. 934, 950) (representation that a product has any therapeutic effect except to the extent of a laxative, "temporarily relieving constipation"); *Sebrone Co.* v. *Federal Trade Commission*, 135 F. 2d 676, 679 (C.A. 7) (representation that product would provide more than "temporary" relief from dandruff or body odor); *Concrete Materials Corp.* v. *Federal Trade Commission*, 189 F. 359 (C.A. 7) (for order see 46 F.T.C. 152, 161) (representation that product would water-proof masonry to any extent other than "temporarily sealing" the pores thereof). But cf. *Dolcin Corp.* v. *Federal Trade Commission*, decided July 1, 1954 (C.A.D.C.)

[8] See *Dr. W. B. Caldwell, Inc.* v. *Federal Trade Commission*, 111 F. 2d 889 (C.A. 7) (for order see 28 F.T.C. 934, 950) (using word "pepsin" to describe product without sufficient pepsin "to possess substantial therapeutic value" by reason thereof); *De Forest's Training, Inc.* v. *Federal Trade Commission*, 134 F. 2d 819, 820 (C.A. 7) (representation that there are employment possibilities for students or graduates of a school "until substantial numbers" of such students or graduates can be employed); *Philip R. Park, Inc.* v. *Federal Trade Commission*, 136 F. 2d 428 (C.A. 9) (making certain representations concerning named products "or any other product of substantially similar composition or possessing substantially similar properties"); *Edward P. Paul & Co.* v. *Federal Trade Commission*, 169 F. 2d 294, 296 (C.A. D.C.) (representations with respect to products "made in substantial part" in Japan); *Gold Tone Studios, Inc.* v. *Federal Trade Commission*, 183 F. 2d 257 (C.A. 2) (using certain words to refer to a business "not substantially engaged" in using certain processes).

[9] *Consolidated Royal Chemical Corp.* v. *Federal Trade Commission*, 191 F. 2d 896, 900 (C.A. 7) (representation that product would have therapeutic effect more than "in a slight degree"); cf. *Lekas & Drivas, Inc.* v. *Federal Trade Commission*, 145 F. 2d 976 (C.A. 2) (court modified order by adding provision permitting representations that it had "a possible slight value as a laxative").

lar," [10] "reasonably," [11] "severe," [12] etc., in situations where, as here, the person subject to the order can have "no doubt of the evils complained of and sought to be corrected." *Zenith Radio Corp.* v. *Federal Trade Commission*, 143 F.2d 29, 31 (C.A. 7); cf. *Brady Transfer & Storage Co.* v. *United States*, 80 F. Supp. 110 (S.D. Iowa), affirmed per curiam, 335 U.S. 875; *Consolidated Flower Shipments, Inc.* v. *Civil Aeronautics Board*, 213 F. 2d 814, 818 (C.A. 9). Particularly pertinent is the statement by the court below in *Consolidated Royal Chemical Corp.* v. *Federal Trade Commission*, 191 F. 2d 896, where it rejected the contention that the Commission's order was "so vague as to make understanding and compliance impossible." The court stated (191 F. 2d at 900):

> This complaint is addressed to paragraphs b. and c. which prohibit advertising which would indicate that the preparation would do more than "aid in a slight degree." The prohibitions containing this phrase seem quite clear and were based on expert testimony. If

---

[10] *Consumer Sales Corp.* v. *Federal Trade Commission*, 198 F. 2d 404, 408 (C.A. 7) (representations relating to public offer sales and "similar project[s] or activit[ies]"); *Philip R. Park, Inc.* v. *Federal Trade Commission*, *supra*, note 8.

[11] *Zenith Radio Corp.* v. *Federal Trade Commission*, 143 F. 2d 29, 31 (C.A. 7); for order, see 35 F.T.C. 579, 586 (representation that radios were capable of providing "reasonably audible and distinct reception of foreign broadcasts").

[12] *Dolcin Corp.* v. *Federal Trade Commission*, decided July 1, 1954 (C.A. D.C.) (representation that product will "afford significant relief of severe aches").

> the preparation will only aid *in a slight degree*, the petitioner's advertising was properly limited to such a claim. While this may considerably hamper the style of petitioner's advertising department, that is the fault of petitioner's preparation and not of the Commission's order. [Italics in original.]

The problem confronting the Commission in this case is but an instance of the general problem arising with respect to the false advertising of proprietary remedies. The experience of the Commission has been that manufacturers of such remedies frequently present them to the public, as respondents did here, as amazing new remedies for this or that, and seek to convey the impression that those who are suffering the ills mentioned need have no further concern because medical science has at last produced a long-needed panacea which will bring them instant relief. All too frequently it turns out that the claims made are exaggerated. Remedies like Imdrin, which relieve the symptoms rather than the causes of the ill, seldom give permanent relief. Indeed, they seldom offer more than temporary relief, which varies as between individuals and as between various complaints. Where the respondents have indulged in gross exaggerations, the Commission is confronted with the problem of framing an order which will put an end to the sort of misrepresentations found to have been made. In such cases, the limitations of language being what they are, the Commission frequently has

no real alternative to the use of a relative term like "temporary" and frequently has used that term in its orders.[13] As the Commission explained in its opinion in this case (R. 964-965):

> The Commission is of the opinion that advertising claims should always be so limited where only temporary relief is afforded unless by the very nature of the claim, there is no real danger of deception. The danger of deception in this case lies particularly in the fact that respondents desire to represent that their preparation will afford relief from pains due to a particular cause, namely, pains of arthritis and rheumatism. By limiting the type of pain relief claimed, respondents imply that a lasting relief will be achieved by eliminating the cause of the pain.

The specificity required of an order, if it is to be effective, necessarily depends upon the particular evils at which it is directed. In the Imdrin order the word "temporary" is appropriate to describe

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[13] *E.g., A. P. Durham*, 46 F.T.C. 346, 360; *Atlantic Research Foundation, Inc.*, 46 F.T.C. 558, 567; *Walter M. Jakway*, 46 F.T.C. 836, 845; *Frederick Godfrey*, 47 F.T.C. 193, 202; *Sterling Drug, Inc.*, 47 F.T.C., 203, 214; *W. L. Hopperstead*, 47 F.T.C. 247, 257; *Martin W. Pretorius*, 47 F.T.C. 449, 514; *National Toilet Company*, 47 F.T.C. 1023, 1029; *William A. Reed Company*, 48 F.T.C. 220, 233; *Warren W. Burgess*, 48 F.T.C. 1199, 1211-1212; *Norlon Corp.*, 48 F.T.C. 1273, 1286; The *Elmo Company, Inc.*, 48 F.T.C. 1379, 1393; *Reliance Pharmacal Co.*, Docket No. 5712, order dated July 13, 1953; *Pruvo Pharmacal Co.*, Docket No. 5778, order dated May 15, 1953; cases cited n. 7, *supra*.

the only relief which Imdrin was found to provide. In short, the order as entered by the Commission, meets the requirement that it "must, like the injunction order of a court, state with reasonable specificity the acts which the respondent is to do or refrain from doing." *National Labor Relations Board* v. *Express Publishing Co.*, 312 U. S. 426, 433; see *Federal Trade Commission* v. *Cement Institute*, 333 U. S. 683, 726. Even the statement of the rule by this Court, it will be noted, speaks in terms of "reasonable" specificity, for the obvious reason, we think, that the requirement of certainty itself is relative and will not be permitted to obstruct the fashioning of an order adequate to cope with the unlawful practices found to exist. Any other rule, imposing a requirement of unattainable absolute certainty, would only have the effect of immunizing certain types of misrepresentations from effective administrative control, and thus defeat the purposes of Congress in enacting the Act.

In eliminating the word "temporary" from the order, the court below relied on its decisions in *D.D.D. Corp.* v. *Federal Trade Commission*, 125 F. 2d 679, 682, and *Carter Products, Inc.* v. *Federal Trade Commission*, 186 F. 2d 821, 826. The *D.D.D.* case involved an order prohibiting representations that a product for which, as here, the respondent had made extravagant claims in its advertising, had any therapeutic effect upon itching "in excess of affording temporary relief from the symptom of itching." A majority of the court thought that the words "relief from itching" could "carry no im-

plication to the public that the product was a permanent cure either for the symptom or the disease." We think that this decision was wrong and should not be followed for the reasons stated by then Circuit Judge Minton in his dissenting opinion. Those reasons are directly apposite to the situation presented by this case (125 F. 2d at 682-683):

> In my opinion, the word "temporary" should remain in the order of the Commission. The representation is that petitioner's product relieves itching. Permanently? Certainly not. There is no dispute in the evidence that it does not relieve permanently. The evidence is that the relief lasts just as long as the nerves in the vicinity of the application are anesthetized. "Temporary" describes that condition. Webster defines "temporary" as meaning "Lasting for a time only, not permanent, transitory, as temporary relief."
>
> *Unless the effect of petitioner's product is limited by the word "temporary" the relief given is not accurately described.* I do not believe the word "relief" means permanent relief alone, but I do think that without the modifying word "temporary" used with the word "relief," you do not accurately describe the relief petitioner's product gives. It seems to me to work no hardship upon a business concern that wants to be fair in its dealings with the public to require it so to construct the wording of its

advertisements as to describe accurately the virtues of its product. [Emphasis added.]

The *D. D. D.* case was followed in *Carter Products*, which involved an order prohibiting representations that an under-arm deodorant would be more than "temporarily effective." But the expert testimony there was that the deodorant might be effective for up to twenty-four hours, whereas in the instant case the only medical witness who gave his opinion as to the duration of the relief to be expected stated that it "would be a matter of perhaps a few minutes, at the longest an hour" (R. 283). We think that the *D. D. D.* and the *Carter Products* cases should not have been deemed controlling by the court below; we note in this connection that in at least four other cases, decided both before and after these cases, the same court enforced Commission orders containing the word "temporary." [14]

We think that the order of the Commission in this case, considered in the light of the evil to which it was directed, stated with "reasonable specificity the acts which the [respondents are] to . . . refrain from doing," [15] and that the court below erred in holding that paragraph 1(c) thereof should be modified as indefinite or ambiguous.

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[14] See cases cited, n. 7, *supra*.

[15] See *National Labor Relations Board* v. *Express Publishing Co.*, 312 U.S. 426, 433.

II

Even If Some Modification of the Order Was Warranted in Order to Make Its Requirements More Definite, the Court Erred in Modifying the Order in a Way That Substantially Reduced the Scope of Relief Prescribed by the Commission.

While the court purported only to redraft paragraph 1(c) of the order which it considered "indefinite or ambiguous" (R. 979), it did not limit itself to eliminating the language it found objectionable. Instead it rewrote the paragraph concerned in a way which cut the heart out of the prohibitions contained in one of the most important paragraphs of the order and substantially narrowed the scope of relief which the Commission had found necessary to protect the public against respondents' misrepresentations.

The drastic nature of the modifications will appear when it is realized that under the modified order respondents may continue to represent:

> (a) that Imdrin will relieve severe aches, pains, and discomforts;
>
> (b) that Imdrin affords prolonged or long-lasting relief; and
>
> (c) that Imdrin will relieve symptoms or manifestations of arthritic or rheumatic conditions other than pain, such as stiffness, swelling, or limitation of motion.

These are representations respondents made in the past, which the Commission found to be false, and the court below explicitly sustained these findings

as based on substantial evidence. Contrary to the suggestion of the court below (R. 980), and as respondents themselves recognize,[16] false representations such as these are not prohibited by the other paragraphs of the order which the court below approved.

Under the statutory scheme, the fashioning of the remedy is a matter entrusted to the Commission, which "has wide discretion in its choice of a remedy deemed adequate to cope with the unlawful practices" shown by the record. *Jacob Siegel Co.* v. *Federal Trade Commission*, 327 U. S. 608, 611. Under Section 5(c) of the Federal Trade Commission Act, the reviewing court has the power to modify an order of the Commission. But as this Court has said, "judicial review is limited . . . to ascertain[ing] whether the Commission made an allowable judgment in its choice of the remedy . . . [The] courts will not interfere except where the remedy selected has no reasonable relation to the unlawful practices found to exist." *Id.* at 612-613; *Federal Trade Commission* v. *A. P. W. Paper Co.*, 328 U. S. 193, 203-204; *Federal Trade Commission* v. *Ruberoid Co.*, 343 U. S. 470, 473; *Federal Trade Commission* v. *Algoma Lumber Co.*, 291 U. S. 67. Cf. *American Power & Light Co.* v. *Securities and Exchange Commission*, 329 U. S. 90, 118. Patently the order here has a "reasonable relation to the unlawful practices found to exist"; in plain terms it prohibited those very practices.

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[16] Memorandum in Rejoinder to Petitioner's Memorandum in Reply, p. 3; Brief in Opposition, pp. 18-20.

If the court deemed it necessary to eliminate from the order the word "temporary," not because it bore no reasonable relation to the unlawful practices found to exist, but because it was objectionable as of indefinite meaning, the court was obliged to draft a substitute provision which retained the substance of the prohibitions prescribed by the Commission.[17] If it found this impractical, or if it

---

[17] Compare *Dolcin Corp.* v. *Federal Trade Commission*, decided July 1, 1954 (C.A. D.C.). That case also concerned an order prohibiting false advertising of a preparation somewhat similar in composition to Imdrin. The order contained a paragraph prohibiting representations that the preparation would "afford any relief of severe aches, pains," etc., or have any therapeutic effect "in excess of affording temporary relief of minor aches, pains or fever." The Court of Appeals for the District of Columbia revised this paragraph to prohibit representations:

> . . . that said preparation will afford significant relief of severe aches, pains and discomforts or permanent relief of any aches, pains and discomforts of rheumatic fever, firbrositis, myositis, neuritis, sciatica, lumbago, bursitis, or any other kind of arthritic or rheumatic condition, or have any therapeutic effect upon any of the symptoms or manifestations of any such condition in excess of affording relief of aches, pains or fever within the foregoing limits.

It will be noted that the court there, while it considered some modification of the order to be appropriate on the record before it, explicitly refused to follow the modification of the Imdrin order as made by the court below (slip opinion, n. 12).

In its petition for rehearing below (R. 982-984), the Commission, while it did not accept the court's reasoning that the word "temporary" should be eliminated from the order, proposed a new draft of paragraph 1(c), consistent with the Court's opinion, which it considered less objectionable than that ordered by the court. The Commission there suggested that paragraph 1(c) might be amended to read (R. 984):

> That said preparation will afford relief from the swelling, stiffness or limitation of motion due to arthritis or

was doubtful as to the scope of the modifications which were appropriate in the light of its opinion, it should have remanded the case to the Commission for reconsideration. *Federal Trade Commission* v. *Morton Salt Co.*, 334 U. S. 37, 55. But the court could not, under the guise of correcting an alleged ambiguity, "exercise an essentially administrative function" by revising the remedy selected by the Commission to conform to its own views as to the measure of protection which the public interest requires. *Federal Power Commission* v. *Idaho Power Co.*, 344 U. S. 17, 21; *Phelps Dodge Corp.* v. *National Labor Relations Board*, 313 U. S. 177, 194.

We have no quarrel with respondents' statement (Br. in Opp., p. 17) that Commission orders must not be "unduly drastic, harsh or burdensome." But the cases upon which they rely in that connection are not pertinent to the problem here presented. In both *Federal Trade Commission* v. *Royal Milling Co.*, 288 U. S. 212, and *Jacob Siegel Co.* v. *Federal Trade Commission*, 327 U. S. 608, the question was whether something less drastic than prohibition of a misleading trade name, namely, the use of qualifying language in connection with such name, might suffice to correct the misrepresentations. As this Court stressed, what was at stake was "a valuable business asset" of the com-

---

rheumatism, or from the severe aches or pains of arthritic or rheumatic conditions; or that said preparation will afford permanent relief from any of the aches or pains of arthritic or rheumatic conditions.

panies concerned in the continued use of trade names which had been adopted without fraudulent design and had been used for many years (288 U. S. at 217; 327 U. S. at 612). The Court thought that it might be possible to accommodate "the policy of the law to protect [trade names] as assets of a business" and "the other policy of preventing unfair or deceptive trade practices" (327 U. S. at 612). But here nothing comparable to a business asset is at stake. The order prohibits only representations precisely like those made in the past which the Commission found were false; respondents lose only their freedom to continue to misrepresent the worth of their product.

The facts of this case particularly command application of the rule prohibiting a reviewing court from substituting its judgment as to the remedy for that of the responsible administrative agency. The record shows [18] that pain, stiffness, and swelling are the characteristic symptoms of the various forms of arthritis and rheumatism. Misrepresentations that a drug will ameliorate stiffness and swelling and afford more than temporary and partial relief of pain obviously will have a strong sales appeal for the approximately seven million people in this country who suffer from one of the myriad forms of these diseases in greater or lesser degree. [19]

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[18] (R. 202, 204, 205, 206, 207, 208, 209, 211, 212, 284, 308, 310, 312, 314, 316, 317, 318, 319).

[19] A 1938 study by the United States Public Health Service estimated that there were 6,850,000 cases of rheumatic diseases in the United States. *Primer on the Rheumatic Diseases*, 152

Such representations to the extent that they succeed in exciting false hopes in the hearts of the afflicted, with the result that they put off seeing a doctor and delay obtaining proper medical treatment, may, as the Commission found (R. 956-957), contribute to the crippling growth of the disease. The order of the Commission thus dealt with misrepresentations in advertising, the prohibition of which was of peculiar importance to the public health. Recognizing the inherent importance of the Commission's order in this case, the court below, we submit, should have followed the principle established in the applicable decisions of this Court that the reviewing court's function is limited to ascertaining whether the Commission, as we think it clearly did, made an allowable judgment in its choice of remedy.

Journal of the American Medical Association 323, 324. A recent Public Health survey indicated that in 1951 the number of sufferers probably was even greater. Woolsey, *Prevalence of Arthritis and Rheumatism in the United States*, 67 Public Health Reports 505 507-508. See R. 154-155, 321.

CONCLUSION

The judgment of the court of appeals, in so far as it modified paragraph 1(c) of the Commission's order, should be reversed.

Respectfully submitted,

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DECEMBER, 1954.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1953.

No. [redacted] 80

FEDERAL TRADE COMMISSION,
Petitioner,

vs.

RHODES PHARMACAL COMPANY, INC., ET AL.,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

BRIEF FOR RESPONDENTS IN OPPOSITION.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1953.

No. 767.

FEDERAL TRADE COMMISSION,
Petitioner,

vs.

RHODES PHARMACAL COMPANY, INC., ET AL.,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

BRIEF FOR RESPONDENTS IN OPPOSITION.

OPINION BELOW.

The opinion of the Court of Appeals for the Seventh Circuit is reported at 208 F. 2d 382 and appears in the record herein at R. 973.

JURISDICTION.

It is conceded that the Federal Trade Commission, petitioner herein, filed a timely petition for certiorari in this Court, which has jurisdiction under 28 U. S. C. 1254(1), as recited in the petition.

QUESTIONS PRESENTED.

The Court of Appeals said (208 F. 2d 382, 387-388):

> "We think the findings of the Commission are supported by substantial evidence. We agree with the conclusions of the Commission that petitioners were engaged in unfair and deceptive practice in commerce. We think that the cease and desist order should be enforced in the manner proposed, with the exception of sub-section (c) which should be modified. Orders of the Commission, which we are called upon to enforce, must not be indefinite or ambiguous. * * *"

The questions presented are:

1. Whether the Court of Appeals had power to modify the Commission's order to cease and desist.

2. Whether the Court of Appeals could modify the Commission's order to cease and desist, if it agreed that the findings and conclusions of the Commission were supported by substantial evidence.

3. Whether the findings and conclusions of the Commission were supported by substantial evidence.

4. Whether the Court of Appeals could modify the Commission's order to cease and desist, if the terms of the order were ambiguous, indefinite, vague or uncertain.

5. Whether the terms of the order to cease and desist issued by the Commission in this case were ambiguous, indefinite, vague or uncertain.

6. Whether the Court of Appeals could modify the Commission's order to cease and desist, if the remedy selected by the Commission was unreasonable or unduly drastic, harsh or burdensome.

7. Whether the remedy selected by the Commission in this case was unreasonable or unduly drastic, harsh or burdensome.

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8. Whether the Court of Appeals could modify the Commission's order to cease and desist, if the remedy selected by the Commission was unnecessary to correct the evil complained of and to protect the public, competitors and respondents.

9. Whether the order to cease and desist in this case was unnecessary to correct the evil complained of and to protect the public, competitors and respondents.

10. Whether the Court of Appeals could modify the Commission's order to cease and desist by re-writing it in a form agreeable to what the Commission thought necessary to correct its ambiguity, indefiniteness, vagueness or uncertainty.

11. Whether the Court of Appeals must remand to the Commission for further consideration every order which it finds to be ambiguous, indefinite, vague, uncertain, drastic, harsh, burdensome or unnecessary.

12. Whether by re-writing a cease and desist order of the Commission to correct its ambiguity, indefiniteness, vagueness or uncertainty, the Court of Appeals was substituting its judgment as to the scope of the remedy for that of the Commission within the meaning of the decisions of this Court.

13. Whether there are any "special and important reasons" for granting the writ in this case.

STATEMENT.

Respondents sell a drug product "Imdrin", in commerce, as that term is defined in the Federal Trade Commission Act. They advertise it in newspapers and on the radio.

The Federal Trade Commission brought administrative proceedings against respondents, charging that their said advertising was deceptive, in violation of the Act.

After protracted hearings, the Commission found that, while respondents so promised purchasers, "Imdrin" would not, among other things, cure rheumatism or arthritis, or provide adequate, effective, or reliable treatment for, or arrest the progress or correct the underlying causes of any such conditions. The Commission ordered respondents to cease and desist from making such claims to therapeutic effect. Such orders are not here in issue.

The Commission also found that "Imdrin" would afford only temporary and partial relief of minor aches and pains of rheumatism and arthritis, and accordingly ordered respondents to cease and desist from representing that "Imdrin" would afford any greater relief.

On review, the Court of Appeals for the Seventh Circuit, 208 F. 2d 382, 387 [7-9], said that "the findings of the Commission are supported by substantial evidence" (R. 979), but also, at p. 388 (R. 980), that:

> "It was overwhelmingly established in the case at bar that Imdrin affords relief for the pain and discomfort incident to many rheumatic and arthritic conditions. That duration of time that such relief was afforded differed with the individuals who used Imdrin. * * *"

The Court further found that the order of the Commission which would require respondents to advertise "Imdrin" as affording only "temporary" pain relief was "indefinite or ambiguous" (R. 979) and of "uncertain meaning" (R. 980), and that reference to "temporary" in the order should be "eliminated" (R. 979). Accordingly, the Court of Appeals modified the Commission's order so as to prohibit respondents from advertising only that "Imdrin" will afford any "permanent" relief of the aches and pains of such conditions (R. 980, 981), or "cure" the symptoms.

The Court of Appeals denied the Commission's petition for rehearing (R. 989), and the Commission brings this Petition for Certiorari.

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ARGUMENT.

The Federal Trade Commission ordered respondents to cease and desist from advertising, among other things, that their drug product "Imdrin" would afford other than "temporary" and "partial" relief of the "minor" aches and pains of rheumatism and arthritis (R. 959).

The Court of Appeals for the Seventh Circuit modified the order (R. 981) to excuse respondents' making these "indefinite or ambiguous" qualifications of "uncertain meaning" (R. 979-980). As modified, the order requires respondents, instead, to refrain from saying that said preparation affords any "permanent" relief of such aches and pains or "cure[s]" the symptoms or manifestations of such conditions (R. 980).

The Commission now asks this Court to grant a writ of certiorari to review these modifications, for three assigned reasons: (1) that the question of whether or not a court of appeals which modifies a cease and desist order, in so doing, may exceed its review powers under the Act, is important and recurring; (2) that the modification of the Commission's order *in this case* was improper, since the Commission alleges that it amounted to a substitution of the reviewing court's judgment as to the scope of necessary relief for that of the Commission; and (3) that no modification of the Commission's order was necessary *in this case*, as the Commission contends that its order was not ambiguous, uncertain, vague or indefinite.

I.

There Are No "Special and Important Reasons" for Granting the Writ, in This Case.

It is clear that the permissible scope of review of cease and desist orders issued by the Federal Trade Commission is a matter of importance, but it is not apparent wherein a review of this case on certiorari will contribute to the clarification of the applicable principle. This Court has already spoken in numerous cases, and petitioner's suggestion that a reviewing court may not substitute its judgment with respect to the scope of relief for that of the Commission may, within limits, be conceded.

The Commission stresses that this case is important, since questions of public health are involved. Such might be true were there here a question of the therapeutic effectiveness of a drug, but respondents have already been ordered to cease making all therapeutic claims for "Imdrin" (R. 958-959), and those parts of the Commission's order are not here attacked. The petition herein puts in issue no more of this case than respondents' claim that "Imdrin" affords symptomatic relief from pain. The effect of such claim upon public health is indirect, remote and conjectural.

It is true that the Commission has taken like action against certain other manufacturers of similar competitive drug products. On December 3, 1952, it issued a comparable cease and desist order against Dolcin Corporation, *et al.*, Docket No. 5692. However, since the filing of the Commission's petition for certiorari herein, the Court of Appeals for the District of Columbia Circuit, upon review, on July 1, 1954, likewise modified the Commission's order in that case. *Dolcin Corporation, et al.* v. *Federal Trade Commission*, D. C. Cir., 1954, No. 11,700. This as yet un-

published opinion in that case is attached hereto as Appendix A. While that Court is not completely in agreement with the Court of Appeals for the Seventh Circuit as to the proper terms of the modified orders in each instance, there is implicit in such action complete unanimity as to the right of courts of appeal to modify the Commission's chosen remedy by re-writing its order.

II.

The Court of Appeals Had Power to Modify the Commission's Order.

It is submitted that the modification of the Commission's order in our case was perfectly proper. It did not amount to a substitution of the judgment of the reviewing court for that of the Commission.

Both the Federal Trade Commission Act and the Administrative Procedure Act give the Court of Appeals power not only to affirm or reverse but also to modify cease and desist orders of the Federal Trade Commission. Federal Trade Commission Act, Sec. 5(c), 15 U. S. C. § 45(c); Administrative Procedure Act, Sec. 10(e), 5 U. S. C. § 1009(e). This power extends to the remedy. *Federal Trade Commission* v. *Royal Milling Co. et al.*, 288 U. S. 212 (1933); *Carter Products, Inc. et al.* v. *Federal Trade Commission*, 7 Cir., 1951, 186 F. 2d 821, 826; *Folds* v. *Federal Trade Commission*, 7 Cir., 1951, 187 F. 2d 658, 661.

A court of appeals may modify or set aside a cease and desist order issued by the Federal Trade Commission so as to eliminate or change the remedy selected by the Commission, where the Commission has acted arbitrarily or capriciously or abused its discretion or has acted unreasonably in its choice of that remedy. *Jacob Siegel Co.* v. *Federal Trade Commission*, 327 U. S. 608, 612, 613 (1946);

Folds v. *Federal Trade Commission*, 7 Cir., 1951, 187 F. 2d 658, 661; *D. D. D. Corporation* v. *Federal Trade Commission*, 7 Cir., 1942, 125 F. 2d 679.

It is respectfully submitted that the Court of Appeals had the power, under the applicable statutes, to enter the modification in question. In the case of *Jacob Siegel Co.* v. *Federal Trade Commission*, 327 U. S. 608, 611, 612, 613, this Court did not repudiate, but cited with approval, its earlier decision in *Federal Trade Commission* v. *Royal Milling Co. et al., supra*, 288 U. S. 212 (1933). The latter was the last and leading case of this Court dealing with the power of a court to modify a Federal Trade Commission order. It affirmed that power. Since that 1933 decision, no Commission case has been decided in the Supreme Court which deviates in any way from the rule enunciated therein. Furthermore, a study of the cases in the Supreme Court since that time reveals no opinion which has even distinguished or mentioned the *Royal Milling* case with disfavor.

Federal Trade Commission v. *Royal Milling Co., supra*, cited with approval cases arising in various circuits in which orders of the Commission *had been* modified: *Fluegelman & Co.* v. *Federal Trade Commission*, 2 Cir., 1930, 32 F. 2d 59; *Federal Trade Commission* v. *Cassoff*, 2 Cir., 1930, 38 F. 2d 790; *Federal Trade Commission* v. *Good Grape Co.*, 6 Cir., 1930, 45 F. 2d 70.

Thereafter, courts in every circuit wherein similar cases arose applied the rule of modification established by the *Royal Milling Co.* case.[1]

1. *Federal Trade Commission* v. *Hires Turner Glass Co.*, 3 Cir., 1935, 81 F. 2d 362; *Etablissements Rigaud, Inc., et al.* v. *Federal Trade Commission*, 2 Cir., 1942, 125 F. 2d 590; *Bear Mill Mfg. Co.* v. *Federal Trade Commission*, 2 Cir., 1938, 98 F. 2d 67; *Federal Trade Commission* v. *Mid West Mills, Inc.*, 7 Cir., 1937, 90 F. 2d 723; *D.D.D. Corporation* v. *Federal Trade Commission*, 7 Cir., 1942, 125 F. 2d 679; *Lee Boyer's Candy* v. *Federal Trade Commission*, 9 Cir., 1942, 128 F. 2d 261; *Ardelle, Inc.* v. *Federal Trade*

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And *since* this Court's decision in *Jacob Siegel Co.* v. *Federal Trade Commission*, 327 U. S. 608 (1946), cease and desist orders have been modified in many circuits.[2]

The original Act creating the Federal Trade Commission was adopted in 1914. That Act was not substantially amended or changed in any respect until 1938 when, after careful consideration of various decisions which had been handed down by this Court and Circuit Courts in the intervening period, and upon request of the Federal Trade Commission, the Act was substantially amended to strengthen and enlarge the jurisdiction of the Federal Trade Commission and to include provisions relating to the finality of the Federal Trade Commission orders. The amending statute, introduced in the United States Senate, was reported by the Committee on Interstate Commerce to the 75th Congress, First Session.[3] That report contained a letter from the Acting Chairman of the Federal Trade Commission, dated February 11, 1936, discussing at length the proposed amendments and particularly the amendments to Section 5 of the Federal Trade Commission Act. Reference is therein made to many decisions of this Court

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Commission, 9 Cir., 1939, 101 F. 2d 718; *Gelb* v. *Federal Trade Commission*, 2 Cir., 1944, 144 F. 2d 580; and see all the cases cited under footnote 2.

2. *Folds* v. *Federal Trade Commission*, 7 Cir., 1951, 187 F. 2d 658; *Carter Products* v. *Federal Trade Commission*, 7 Cir., 1951, 186 F. 2d 821; *Milk & Ice Cream Can Institute* v. *Federal Trade Commission*, 7 Cir., 1946, 152 F. 2d 478; *Standard Oil Co.* v. *Federal Trade Commission*, 7 Cir., 1949, 173 F. 2d 210, cert. granted 338 U. S. 665; *U. S. Printing & Novelty Co.* v. *Federal Trade Commission, D. C. Cir.*, 1953, 204 F. 2d 737; *Bork Mfg. Co.* v. *Federal Trade Commission*, 9 Cir., 1952, 194 F. 2d 611; *Lichtenstein* v. *Federal Trade Commission*, 9 Cir., 1952, 194 F. 2d 607; *Hamilton Mfg. Co.* v. *Federal Trade Commission*, D. C. Cir., 1952, 194 F. 2d 346; *Gold Tone Studios* v. *Federal Trade Commission*, 2 Cir., 1950, 183 F. 2d 257; *Bond Crown & Cork Co.* v. *Federal Trade Commission*, 4 Cir., 1949, 176 F. 2d 974.

3. Senate Report No. 221, Vol. I, Senate Reports on Public Bills, etc., Serial No. 10076.

and of the Circuit Courts, but no reference whatever was therein made, nor any exception taken, to the existing decisions whereunder it had been held that the Circuit Court did have the power to modify orders of the Federal Trade Commission.[4]

The Act, as finally adopted after conference report of the two Houses of Congress, is of exceptional significance in that Congress *specifically retained* the power in the Circuit Court to modify orders of the Federal Trade Commission. In columnar form, we set forth below excerpts from the Act, more particularly portions of Section 5 thereof, as the same existed prior to the amendment in 1938 and as the same read after the 1938 statute.

38 STAT. 719.	52 STAT. 111.
Sec. 5 (p. 720):	Sec. 5(c).
* * *	
"* * * Any party required by such order of the commission to cease and desist from using such method of competition may obtain a review of such order in said circuit court of appeals by filing in the court a written petition praying that the order of the commission be set aside. A copy of such petition shall be forthwith served upon the commission, and thereupon the commission forthwith shall certify and file in the court a transcript of the record as hereinbefore provided. Upon the filing of the transcript *the court shall have the same jurisdiction to affirm, set aside, or modify the order of the commission* as in the case of an application by the commission for the	"(c) Any person, * * * or corporation required by an order of the Commission to cease and desist from using any method of competition or act or practice may obtain a review of such order in the circuit court of appeals of the United States, * * * by filing in the court, * * * a written petition praying that the order of the Commission be set aside * * *. Upon such filing of the petition and transcript *the court shall have jurisdiction* of the proceeding and of the question determined therein, *and* shall have *power to make and enter* upon the pleadings, evidence, and proceedings set forth in such transcript *a decree affirming, modifying or setting aside the order of the Commission, and enforc-*

4. These included *Federal Trade Commission* v. *Hires Turner Glass Co.*, 3 Cir., 1935, 81 F. 2d 362; *Federal Trade Commission* v. *Mid West Mills, Inc.*, 7 Cir., 1937, 90 F. 2d 723; *Fluegelman* v. *Federal Trade Commission*, 2 Cir., 1930, 32 F. 2d 59.

38 STAT. 719.

enforcement of its order, and the findings of the commission as to the facts, if supported by testimony, shall in like manner be conclusive.

"The jurisdiction of the circuit court of appeals of the United States to *enforce, set aside, or modify* orders of the commission shall be exclusive."

52 STAT. 111.

ing the same to the extent that such order is affirmed, * * *."

"(d) The jurisdiction of the circuit court of appeals of the United States to *affirm, enforce modify, or set aside* orders of the Commission shall be exclusive."

Here, then, is an amendment to the Act expressly recognizing and reenacting the Court's power of modification.

It is a well recognized rule of statutory construction that where a legislature enacts a statute amending an existing law, it is presumed to have been cognizant of Court interpretations of that law. Any attempted alteration of judicial construction of the prior law must be expressed in clear and appropriate language, otherwise the statute will continue to be interpreted as theretofore by the courts. *Johnson* v. *Manhattan Ry. Co.*, 289 U. S. 479, 500 (1933); *Hecht* v. *Malley*, 265 U. S. 144, 153 (1924); *Heald* v. *District of Columbia*, 254 U. S. 20 (1920); *Louisville Cement Co.* v. *Interstate Commerce Commission*, 246 U. S. 638, 644 (1917); *Latimer* v. *U. S.*, 223 U. S. 541 (1912); *Commissioner of Internal Revenue* v. *F. G. Bonfils Trust*, 10 Cir., 1940, 115 F. 2d 788.

Moreover, it is a basic rule of statutory construction that each word in a statute must be given its full significance. *U. S.* v. *Lexington Mill Co.*, 232 U. S. 399 (1913); *Washington Market Co.* v. *Hoffman*, 101 U. S. 112 (1879).

The *Royal Milling Co.* case was the supreme law of the land at the time of the enactment of the 1938 Wheeler-Lea Amendment to the Federal Trade Commission Act. Its doctrine was being followed by the various circuits. Had Congress intended to circumscribe the power of the court to modify orders of the Commission, it would have used

appropriate language to that end. It is presumed to have acted with knowledge of those decisions and their effect. However, rather than limiting the powers of the Court the legislature utilized language which clearly comprehended the Court's powers and manifestly extended them for future application.

It is therefore respectfully submitted that an analysis of the *Royal Milling Co.* case and the decisions in the various circuits following it, as well as the Federal Trade Commission Act itself, and the Act as amended, establishes beyond doubt that the Court of Appeals has the power to modify the instant order in the manner it did.

III.

The Court of Appeals May Modify the Commission's Order Even Though It Agrees With the Commission's Findings of Fact.

In view of such express congressional authority and mandate, as interpreted and followed by the courts, the Commission can scarcely contend that the Court of Appeals lacked power to modify its order. So the Commission implies that such power to modify is limited to those cases in which the Court disagrees with the Commission's findings of fact. The Commission emphasizes that in this case the Court held that the pertinent findings of the Commission were supported by substantial evidence.[5]

We do not think that Congress meant to so circumscribe the Court's power of review or to confine the Court's power to re-draft Commission orders to those cases in which the Court disagreed substantively with the Commission. Certainly, it did not expressly limit the power to modify such orders when it chose the language of the

5. Cf. Petition for a Writ of Certiorari, pp. 2, 4, 7, 9.

Wheeler-Lea Amendment to the Act. Yet Congress knew, in 1938, that in the *Royal Milling Co.* case, decided five years before, this Court had decided that the power to modify Commission orders existed *even when the Court agreed with the Commission's findings.* In the opinion in that case, 288 U. S. 212 (1933), Mr. Justice Sutherland, speaking for the Court, said (p. 217):

> "*Although we sustain the commission in its findings and conclusions* to the effect that the use of the trade names in question and the misstatements referred to constituted unfair methods of competition within the meaning of the act, and that its proceeding was in the interest of the public, *we think under the circumstances the commission went too far* in ordering what amounts to a suppression of the trade names. * * *" [Emphasis supplied.]

In *Federal Trade Commission* v. *Good Grape Co.*, 6 Cir., 1930, 45 F. 2d 70, cited in this Court's opinion in the *Royal Milling Co.* case, the Court of Appeals said (p. 72):

> "The[se] findings are supported by the evidence."

But it modified the Commission's order.

Since the *Royal Milling Co.* case, various courts of appeal have modified cease and desist orders while they expressed agreement with the Commission's findings.[6]

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6. *Carter Products* v. *Federal Trade Commission*, 7 Cir., 1951, 186 F. 2d 821; *D.D.D. Corp.* v. *Federal Trade Commission*, 7 Cir., 1942, 125 F. 2d 679; *Milk & Ice Cream Can Institute* v. *Federal Trade Commission*, 7 Cir., 1946, 152 F. 2d 478; *Standard Oil Co.* v. *Federal Trade Commission*, 7 Cir., 1949, 173 F. 2d 210, cert. granted 338 U. S. 865; *DeForest's Training, Inc.* v. *Federal Trade Commission*, 7 Cir., 1943, 134 F. 2d 819; *Salt Producers Assn.* v. *Federal Trade Commission*, 7 Cir., 1943, 134 F. 2d 354; *Hamilton Mfg. Co.* v. *Federal Trade Commission*, D. C. Cir., 1952, 90 U. S. App. D. C. 169, 194 F. 2d 346; *U. S. Printing & Novelty Co.* v. *Federal Trade Commission*, D. C. Cir., 1953, 204 F. 2d 737; *Bork Mfg. Co.* v. *Federal Trade Commission*, 9 Cir., 1952, 194 F. 2d 611; *Lichtenstein* v. *Federal Trade Commission*, 9 Cir., 1952, 194 F. 2d 607; *Gold Tone Studios* v. *Federal Trade Commission*, 2 Cir., 1950, 183 F. 2d 257; *Bond Crown & Cork Co.* v. *Federal Trade*

In *Federal Trade Commission* v. *Hires Turner Glass Co.*, 3 Cir., 1936, 81 F. 2d 362, the Court of Appeals likewise modified the order of the Commission, even though it recognized that the findings of the Commission were supported by substantial evidence. In so doing, that Court made clear (p. 363):

> "In approaching these issues, we bear in mind the admonition in *Federal Trade Commission* v. *Algoma Lumber Co.*, 291 U. S. 67, 73, * * * where the Supreme Court said: ' "The findings of the Commission as to the facts, if supported by testimony, shall be conclusive." 15 U. S. C. § 45 * * *. The Court of Appeals [64 F. (2d) 618], though professing adherence to this mandate, honored it, we think, with lip service only. * * *' "

The Court of Appeals felt that the kind of modification of the Commission's order it there proposed to make did not fall within the statutory language quoted. More important, Congress knew of this decision when it amended the Act in 1938 but failed to proscribe such practice, clear evidence of its intent in that behalf.

Again, in *Etablissements Rigaud, Inc., et al.* v. *Federal Trade Commission*, 2 Cir., 1942, 125 F. 2d 590, the Court accepted the findings of the Commission but nevertheless modified not only the language but the *substance* of the order.

And in *Bear Mill Mfg. Co.* v. *Federal Trade Commission*, 2 Cir., 1938, 98 F. 2d 67, 68-69, the Court said:

> "* * * we cannot say that the findings are not sup-

Commission, 4 Cir., 1949, 176 F. 2d 974; *Sweets Co. of America* v. *Federal Trade Commission*, 2 Cir., 1940, 109 F. 2d 296; *Ultra-Violet Products, Inc.* v. *Federal Trade Commission*, 9 Cir., 1944, 143 F. 2d 814; *Standard Container Mfgrs. Assn.* v. *Federal Trade Commission*, 5 Cir., 1941, 119 F. 2d 262, 266; *Gimbel Bros.* v. *Federal Trade Commission*, 2 Cir., 1941, 116 F. 2d 578, 579-580; *Lee Boyer's Candy* v. *Federal Trade Commission*, 9 Cir., 1942, 128 F. 2d 261; *Federal Trade Commission* v. *Chas. N. Miller Co.*, 1 Cir., 1938, 97 F. 2d 563.

> ported by substantial evidence or that the order to cease and desist * * * which the Commission issued in consequence of the findings was without foundation."

But it modified the Commission's cease and desist order. To like effect see *Federal Trade Commission* v. *Mid West Mills, Inc.*, 7 Cir., 1937, 90 F. 2d 723.

In view of these many decisions, both before and after the 1938 Amendment of the Federal Trade Commission Act, and before and after the decision of this Court in the *Siegel* case, *ante*, it cannot seriously be urged that the Court of Appeals cannot change the terms of a cease and desist order issued by the Commission if it agrees with the Commission's findings. If the Court of Appeals disagrees with such findings, it must, of course, either set aside the Commission's order or at least modify same. But if the Court believes that the Commission's findings are proper, it may still change the Commission's order, if it also believes the Commission did not act reasonably in its selection of an appropriate remedy.

It is noteworthy that we are unable to find any case in which a Court of Appeals referred to the Commission's action as "arbitrary", "capricious" or "unreasonable." But if these are the only permissible bases upon which to predicate a reversal or modification, it would seem that a finding of some abuse of discretion is implicit in every such action. The closest approach to a direct reprimand of the Commission which we have thus far encountered is that in *Folds* v. *Federal Trade Commission*, 7 Cir. 1951, 187 F. 2d 658, 661, where the Court said:

> "The trial examiner made a very sensible and sound recommendation based upon the entire record. It is difficult to understand why the Commission did not follow his recommendation, instead of making a mountain out of a pimple as they have attempted to do in this case."

IV.

The True Rule: An "Allowable Judgment" by the Commission in Its Selection of a Remedy Requires the Choice of One That Is Reasonable and Not Unduly Drastic, Harsh or Burdensome.

We agree that the true rule as to the scope of judicial review of Federal Trade Commission orders is reflected in the statement of this Court in *Jacob Siegel Co.* v. *Federal Trade Commission*, 327 U. S. 608, 611 (1946) that:

> "* * * judicial review is limited * * * to ascertain[ing] whether the Commission made an allowable judgment in its choice of the remedy."

We do not think this Court, by such language, meant to preclude review of the remedy selected by the Commission or to deprive the Court of Appeals of its statutory power and obligation to modify in a proper case. It meant only to effectuate Congressional intent to repose in the agency such sound discretion as its expertise merits, in this case the initial determination of what remedy to invoke. True, it meant to prescribe a narrower standard of review than might otherwise have been supposed to obtain; but it did not mean to foreclose review of the remedy.

What constitutes "an allowable judgment" in the Commission's choice of a remedy is not clear, but this Court sheds some light on the subject when it says, 327 U. S. 608, 612:

> "the courts will * * * interfere * * * where the remedy selected has no reasonable relation to the unlawful practices found to exist."

From this we see that an allowable judgment as to the choice of a remedy must be subjected to the test of logical

inference; but that alone will not be determining. It should be remembered that in *Jacob Siegel Co.* v. *Federal Trade Commission*, 327 U. S. 608 (1946), the remedy selected by the Commission would have required petitioner to cease and desist from using the word "Alpacuna" to describe its coats. Since the use of this name was a practice complained of as misleading, it would have been entirely logical, upon a finding that such representation was deceptive, to proscribe the use of that term, and the Commission elected so to do. Nevertheless, this Court reversed, saying (pp. 612-613):

> "The problem is to ascertain whether that policy [to avoid "drastic means" where unnecessary] and the other policy of preventing unfair or deceptive trade practices can be accommodated. * * * the Commission seems not to have considered whether * * * the ends of the Act could be satisfied [otherwise] and the trade name at the same time saved. We find no indication that the Commission considered the possibility of such an accommodation. * * *"

It would appear from the foregoing that the Commission's order must not be unduly drastic, harsh or burdensome. See also *Federal Trade Commission* v. *Royal Milling Co.*, 288 U. S. 212, 217 (1933); *Gimbel Bros.* v. *Federal Trade Commission*, 2 Cir., 1941, 116 F. 2d 578, 579 [6]. And the Commission must have considered and rejected, for reasonable cause, alternative possible remedies.

And it should be remembered that in the *Siegel* case, *supra*, the Commission in its Brief, pp. 20, 21 and 22, similarly urged:

> "The Commission, with its valid finding before it, was entitled to conclude that nothing short of prohibition of the term 'Alpacuna' would give assurance of preventing the deception springing from the use of this name. * * * * * * If the Commission's orders

are to possess any vitality, *the restraint must be complete and unqualified* * * *"

* * * * *

"Petitioner's attempt (Br. 8-9) to fasten upon the Commission the requirement that there must be *substantial evidence of the inadequacy of milder remedies* in order to sustain the remedial provision contained in a Commission order, must fail in this case * * * **Factual determinations are not involved in prescribing a remedy,** * * * but decisions primarily of policy—in short, discretionary decisions which lie at the heart of the administrative process and are not to be disturbed by courts unless arbitrarily or irrationally made."

It would appear that this Court rejected this contention, at least in part, holding that the Commission's restraint need not be complete and unqualified and that the inadequacy of milder remedies must affirmatively appear.

V.

The Modified Order Sufficiently Preserves the Commission's Justifiable Intent to Protect the Public, Competitors and Respondents. It Is Not a Substitution of Judgment.

In this case, the Court of Appeals changed the Commission's order to prohibit respondents' saying that "Imdrin" would afford "permanent" pain relief, instead of requiring them affirmatively to specify that the pain relief afforded would be only "temporary". The antonym of "permanent" is "temporary". Webster's New International Dictionary, 2d Ed., 1934, p. 1824. Therefore, under the modified order, any claim to pain relief which petitioners may make short of "permanent" relief, must be equated to "temporary". These adjectives refer only to the duration of the relief afforded. Intermediate gradations involve unwarranted hair-splitting.

When the Commission expresses fear that respondents may circumvent its original order while complying with the Court's modification, by claiming that "Imdrin" affords "extended" or "substantial" pain relief (Pet. 12), it neglects to point out that these terms [which had not occurred to respondents] are likewise indefinite, vague and ambiguous.

The Commission does not satisfactorily explain *how* respondents may practically comply with its order prohibiting reference to pain relief in excess of "temporary" without using that objectionable term. It takes refuge instead in the general propositions that "the Commission's order does not require [respondents] to do so" and "the order is not bound to chart a course for petitioner" (Pet. 15). The Commission has itself often urged that *unqualified* claims to a given effect import permanency. See *International Parts Corporation* v. *Federal Trade Commission*, 7 Cir., 1943, 133 F. 2d 883; *D. D. D. Corporation* v. *Federal Trade Commission*, 7 Cir., 1942, 125 F. 2d 679; *Carter Products* v. *Federal Trade Commission*, 7 Cir., 1951, 186 F. 2d 821. It may be assumed that the Commission would take the same position were respondents here to use the word "relief" alone. We submit that compliance with such an order is otherwise practically and logically impossible.

On the other hand, if respondents were to claim that "Imdrin" affords relief from "severe" pains, that representation would not refer to the duration of the relief, but to the intensity of the pain, something equally nebulous (R. 217-218). The modified order of the Court of Appeals likewise eliminated the Commission's requirement that respondents refer only to "minor" pains. While the Court assigned no specific reason for so doing, such is not indispensable, and it may be assumed that this elimina-

tion was also made for the reason that such term was vague, ambiguous and indefinite.

And if respondents were to claim that "Imdrin" will "stop" swelling or stiff joints, the Commission would immediately insist that respondents were advertising a "cure of the symptoms" of rheumatism and arthritis, *D. D. D. Corp.* v. *Federal Trade Commission*, 7 Cir., 1942, 125 F. 2d 679, 682, something which is prohibited by the modified order (R. 980).

Therefore, it cannot be said that the Court of Appeals re-wrote the order of the Commission in such manner as to substitute its judgment as to the remedy for that of the Commission or to change the intent of the order or narrow its scope any more than necessary to eliminate the ambiguity and to give effect to the Court's criticism of the Commission's action. To such an extent, a limited counter-suggestion of the terms of an appropriate order is inevitable and inherent in the reviewing court's power to "modify" the order. Surely it is not suggested that *every* case in which the Court disagrees with the Commission's choice of a remedy must be remanded to the Commission for further deliberation and consideration of other remedies likewise possibly unacceptable to the Court and subject to further rejection. Such a process could continue *ad infinitum*. We are confident that Congress did not so intend.

VI.

The Commission's Original Order Was Definitely Ambiguous.

Paragraph 1(c) of the Commission's order would have required respondents to cease and desist from advertising that "Imdrin" would afford more than "temporary" pain relief. The Commission argues that this adjective is not

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ambiguous or uncertain and that "this word did not render the Commission's order vague or indefinite, and that the Court of Appeals erred in holding that modification of the order was necessary." (Pet. 14.) We think the term is patently indefinite, uncertain, vague and ambiguous.

The Court of Appeals correctly observed, 208 F. 2d 382, 388:

> "In *Carter Products, Inc.* v. *Federal Trade Commission*, 7 Cir., 186 F. 2d 821, 826, we stated, ' * * * this court in *D. D. D. Corp.* v. *Federal Trade Commission*, [7 Cir., 125 F. 2d 679] * * * disapproved of the use of the word "temporary" because of its *very uncertain* meaning. We pointed out that *it might mean only a few minutes*, yet experts testifying before the Commission in this case admitted that Arrid's deodorant properties are effective at least three to six hours. We think in the case at bar, as we did in the D. D. D. case that *protection of the public does not require petitioners to use the word "temporary" or "temporarily", and that to require its use would be unfair to the petitioners* in representing the truth as to Arrid.' In *D. D. D. Corp.* v. *Federal Trade Commission*, 7 Cir., 125 F. 2d 679, 682, we said, 'We are also of the view that the word "temporary" as used in * * * the Commission's order should be eliminated. We see no reason why petitioner should not be permitted to represent its product as a relief for itching. It does not cure either the itch or its cause, but it does afford relief. * * * *The word "temporary" carries an uncertain meaning.*' " [Emphasis supplied.]

And in *Dolcin Corporation, et al.* v. *Federal Trade Commission*, D. C. Cir., 1954, No. 11,700, thus far reported only in Commerce Clearing House Trade Regulation Reporter, ¶ 67,670 *et seq.* (Reproduced in Appendix A hereto), the Court of Appeals for the District of Columbia, on July 1, 1954, in modifying a substantially identical order, said:

> "Paragraph 1(c) of the order directs petitioners to

cease and desist representing 'that said preparation will afford any relief of severe aches, pains, and discomforts of * * * any kind of arthritic or rheumatic condition or have any therapeutic effect upon any of the symptoms or manifestations of any such condition *in excess of affording temporary relief of minor aches, pains or fever.*'

"Petitioners urge that this provision is unduly restrictive, in that their product does give a measure of relief that is more than temporary, and in cases of pain that are more than minor. The record contains much to support this position, though it also supports the Commission's finding that Dolcin 'will have no significant effect upon severe aches, pains and discomforts' of the conditions involved. The Commission says that petitioners in complying with the order as written, 'are not required to use the word "temporary," [Cf. Petition for Certiorari herein, p. 15, footnote 10]. They can comply by merely avoiding the use of such phrases as "prolonged relief".' (Br. 39.) Although the Commission does not say so, like reasoning would seem to permit petitioners to avoid using the word 'minor'. *This leaves an undesirable ambiguity.* As we recently said: 'It seems to us to be better procedure, in that it will eliminate confusion and possible misunderstanding, to modify the order in accordance with a clear statement of its intended meaning, rather than to construe an admittedly *ambiguous* phrase.' *Hamilton Mfg. Co.* v. *Federal Trade Commission*, 90 U. S. App. D. C. 169, 194 F. 2d 346 (1952)." [Emphasis supplied.]

It would thus appear that the Courts of Appeal of two circuits are in complete agreement as to the ambiguity of the word "temporary" when used in the context employed in these cases.

But the Commission points out that it "could have prohibited respondents from advertising that 'Imdrin' would give relief for more than an hour", since one witness testified that in his opinion such would be its maximum dura-

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tion. (Pet. 15.) This was the only witness who so specified, and we doubt that such testimony provided more than a scintilla of evidence of such probative quality as would substantially support a finding to that effect. Particularly is such the case in view of the fact that this Court may on appeal judicially notice that the period of relief afforded by a minimum dose of common aspirin ordinarily exceeds the hour mentioned. And it cannot be said that an appreciable number of persons would not understand the term "temporary" to mean less than even one hour. Neither the Court of Appeals for the Seventh Circuit nor that for the District of Columbia saw fit to modify the orders in any of the above cases by specifying the number of hours it thought "temporary", although there was such evidence in each case.

Moreover, we are not here concerned with what the Commission believes it had power to order, if it so desired. We are concerned only with the effect of the terms of what it ordered. In speaking of the terms of a statute, Mr. Justice Sutherland, dissenting in *Ferry* v. *Ramsey*, 277 U. S. 88, 97 (1928), said:

> " * * * I should have supposed the liability of the director must be measured by what the state has *enacted* and not by what it had the *power* to enact." [Emphasis supplied.]

It would therefore appear that there is little doubt but what the cease and desist order, as originally drafted by the Commission was ambiguous and unclear and that the Court of Appeals was under the duty to revise it as it did.

Conclusion.

The case was correctly decided in accordance with established principles, and there is no question warranting further review by this Court. It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

FRANK E. GETTLEMAN,
ARTHUR GETTLEMAN,
EDWARD BRODKEY,
Attorneys for Respondents.

July, 1954.

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APPENDIX A.

DOLCIN CORPORATION, AND VICTOR VAN DER LINDE, GEORGE SHIMMERLIK, AND ALBERT T. WANTZ, INDIVIDUALLY AND AS OFFICERS OF DOLCIN CORPORATION v. FEDERAL TRADE COMMISSION.

In the United States Court of Appeals for the District of Columbia Circuit. No. 11700. Decided July 1, 1954.

On petition for review of order of the Federal Trade Commission.

* * * * *

III.

[*Contention of Inadequate Evidence.*]

Petitioners earnestly contend that the provisions of the Commission's order[11] are not adequately supported by the evidence.

At the hearing Dolcin offered considerable testimony in support of its advertising. There was conflicting evidence on many points. But we do not think the Commission resolved the conflict in an unreasonable manner. Subject to what is about to be said concerning paragraph 1(c) of the order, we think the findings and order were supported, on the record as a whole, by substantial evidence. They must, therefore, be upheld, unless they are defective in other respects. *Universal Camera Corp.* v. *National Labor Relations Board*, 340 U. S. 474 (1951).

Paragraph 1(c) of the order directs petitioners to cease and desist representing "that said preparation will afford

11. See note 1, *supra*.

any relief of severe aches, pains, and discomforts of rheumatic fever, fibrositis, myositis, neuritis, sciatica, lumbago, bursitis, or any other kind of arthritic or rheumatic condition or have any therapeutic effect upon any of the symptoms or manifestations of any such conditions in excess of affording temporary relief of minor aches, pains, or fever."

Petitioners urge that this provision is unduly restrictive, in that their product does give a measure of relief that is more than temporary, and in cases of pain that are more than minor. The record contains much to support this position, though it also supports the Commission's finding that Dolcin "will have no significant effect upon severe aches, pains and discomforts" of the conditions involved. The Commission says that petitioners, in complying with the order as written "are not required to use the word 'temporary'. They can comply by merely avoiding the use of such phrases as 'prolonged relief.'" (Br. 39.) Although the Commission does not say so, like reasoning would seem to permit petitioners to avoid using the word "minor." This leaves an undesirable ambiguity. As we recently said: "It seems to us to be better procedure, in that it will eliminate confusion and possible misunderstanding, to modify the order in accordance with a clear statement of its intended meaning, rather than to construe an admittedly ambiguous phrase." *Hamilton Mfg. Co.* v. *Federal Trade Commission* [1953 TRADE CASES ¶ 67,216], 90 U. S. App. D. C. 169, 194 F. 2d 346 (1952).[12]

We think that there will be less ambiguity, and closer conformity to the Commission's findings, if paragraph 1(c) of the present order is modified to read as follows:

"that said preparation will afford significant relief of

12. In *Rhodes Pharmacal Co.* v. *Federal Trade Commission* [1953 Trade Cases ¶ 67,607], 208 F. 2d 382 (1953), the Seventh Circuit had before it an order similar to the present, issued with respect to a drug called "Imdrin," of much the same formula as Dolcin. The court modified the order, but in a manner which we do not consider would be justified on the record in the present case.

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severe aches, pains and discomforts or permanent relief of any aches, pains and discomforts of rheumatic fever, fibrositis, myositis, neuritis, sciatica, lumbago, bursitis, or any other kind of arthritic or rheumatic condition, or have any therapeutic effect upon any of the symptoms or manifestations of any such condition in excess of affording relief of aches, pains or fever within the foregoing limits;''

* * * * *

The order of the Commission will accordingly be affirmed, as modified, and the enforcement thereof, as modified, will be ordered; additional evidence shall be taken in accordance with this opinion.

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HAROLD B. WILLEY, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1954.

No. 80

FEDERAL TRADE COMMISSION,
Petitioner,

vs.

RHODES PHARMACAL COMPANY, INC., ET AL.,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

MEMORANDUM IN REJOINDER TO PETITIONER'S MEMORANDUM IN REPLY.

FRANK E. GETTLEMAN,
ARTHUR GETTLEMAN,
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Attorneys for Respondents.

THE GUNTHORP-WARREN PRINTING COMPANY, CHICAGO

IN THE

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MEMORANDUM IN REJOINDER TO PETITIONER'S MEMORANDUM IN REPLY.

The Federal Trade Commission admits that the Court of Appeals had the power to modify the Commission's cease and desist order, including the remedy, even if it agreed with the Commission's findings. (Memo in Reply, p. 2.) It contends only that the particular modification made in this case was improper, since it not only eliminated the ambiguity of petitioner's order, but, it is claimed, "substantially alter[ed] the measure of the relief which the Commission had found necessary to protect the public against respondents' misrepresentations." (*Ibid.*) This contention is without merit, for two reasons: first there was

no substantial change in the order; and second, necessary modifications in substance are proper.

It is true that "The Commission * * [wa]s of the opinion that the inclusion of the word 'temporary' as used in the order * * [wa]s *necessary* and proper in all respects" (R. 965), while the Court, on the contrary, found "that the protection of the public *does not require* petitioners to use the word 'temporary' * *". (R. 979.) [Emphasis supplied.] But that is not a prohibited substitution of judgment. As pointed out in our Brief in Opposition, the remedy selected by the Commission must have a "reasonable relation to the unlawful practices found to exist," *Jacob Siegel Co.* v. *Federal Trade Commission*, 327 U. S. 608, 612. (Br. in Opp. p. 16.) Such reasonable relation must include a showing of the necessity of the order in question, which must not be unduly drastic, harsh or burdensome. *Ibid.*, pp. 612-613. (Br. in Opp. p. 17.)

In its Opinion, the Commission states:

> "Respondents raise two objections to the use of the word 'temporary' in the hearing examiner's order. One, that it is unnecessary, and two, that it is uncertain in its meaning. The Commission is of the opinion that advertising claims should *always* be so limited where only temporary relief is afforded unless by the very nature of the claim, there is no danger of deception. The danger of deception in this case lies particularly in the fact that respondents desire to represent that their preparation will afford *relief from pains due to a particular cause*, namely, pains of arthritis and rheumatism. *By limiting the type of pain relief claimed, respondents imply that a lasting relief will be achieved* by eliminating the cause of the pain. * * * The Commission, *therefore*, is of the opinion that the inclusion of the word 'temporary' * * is necessary * *." [Emphasis supplied.] (R. 964-965.)

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The courts of appeal for both the Seventh and the District of Columbia Circuits have decided that the term "temporary" is uncertain and ambiguous. (Br. in Opp. pp. 21-22.) In so doing, both courts have, in a sense, substituted their judgment for that of the Commission, but only to test the reasonableness of the Commission's action. So too, in our case, the Court of Appeals eliminated "temporary" from the Commission's order only to make it reasonable.

The Commission's original order was not reasonable or necessary. It is submitted that it does not follow, as recited in the above excerpt from the Commission's Opinion, that a claim to relief of the pain of a particular condition, such as arthritis, imports more lasting relief than a claim to pain relief generally, or that the use of the word "temporary" in a cease and desist order is "therefore" required.

And as pointed out in our Brief in Opposition (Br. in Opp. pp. 18-20), the Commission's order, as modified by the court below, sufficiently preserves the Commission's justifiable intent to protect the public, and is not a substitution of the Court's judgment for that of the Commission within the meaning of the applicable decisions. Paragraph 1(c) of the order, as modified (R. 980), will prohibit respondents' claiming that "Imdrin" will stop swelling or stiff joints. To the extent that the modified order does not require respondents to specify that "Imdrin" will relieve only "minor" pains, it will, of course, permit them, should they so desire, to claim that the preparation will in some way affect "severe" pains. If this is a substitution of the Court's judgment for that of the Commission, it is a permissible one. If it curtails the scope of the Commission's order to deny it the use of an admittedly indefinite (R. 965) term such as "temporary" or "severe," Congress contemplated such curtailment.

Petitioner admits that the Court can change its order. It does not specify in what respect the Court may do so. We agree that the Commission's order may not be modified unless it is arbitrary, capricious or unreasonable or constitutes an abuse of discretion. But if it is subject to such criticism, it would be interesting to know what, if anything, the Commission believes Congress intended to authorize the Court of Appeals to do with that order. Anything the Court would do by way of modification, to correct the order in the light of its disagreement with the Commission, would be a necessary substitution of its judgment for that of the agency. Does the Commission think the Congressional authority to modify contained in Section 45(c) of the Act is empty rhetoric?

The Commission admits that the courts of appeal have power to re-write the Commission's cease and desist orders to correct formal defects, such as to clarify an ambiguity of terms (Petitioner's Memo in Reply, p. 2), or to provide a less drastic remedy (*Ibid.* p. 3), but insists that such power does not extend to making modifications of a substantive nature. We disagree. Neither the express language of the statute, 15 U. S. C. § 45(c), nor the decisions of the courts so limit the power to modify.

In *Federal Trade Commission* v. *Royal Milling Co.*, 288 U. S. 212, 218, this Court specified the respect in which it expected the Commission's order to be changed and remanded with directions to permit the respondents to continue to use their trade name, subject to qualifications. In *Jacob Siegel Co.* v. *Federal Trade Commission*, 327 U. S. 608, 613-614, the Court said it was "left in the dark" whether a less drastic order would suffice and was "not ready to pass on the question whether the limits of discretion have been exceeded in the choice of the remedy until the administrative determination is first made." In both cases, it was the use of the trade name which the

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Commission claimed was deceptive. If the misleading character of the trade name was alone enough basis for the Commission's order to cease using it, there would have been no cause for this Court reviewing the case. By doing so, this Court clearly showed that there were other considerations to be taken into account, despite the Commission's insistence that "If the Commission's orders are to possess any vitality, the restraint must be complete and unqualified * *." (Br. in Opp. pp. 17-18.) This is obviously a proper and contemplated substitution of the judgment of the courts for that of the Commission, as to the remedy.

But petitioner suggests that these cases are distinguishable from that at bar. It says that, in the cases cited, this Court was concerned only with whether there was a remedy less drastic than that selected by the Commission to correct the misrepresentations, whereas here the question is whether the Court can "modify the order so as to permit continuation of those very misrepresentations." Petitioner misses the point. The determination of whether a less drastic remedy will suffice to protect the public may well entail rejection of one capriciously proposed by the Commission, although definitely intended. The courts need not effectuate the Commission's intent in the choice of a remedy under all conditions. Consequently, the cases are not distinguishable in principle.

Petitioner implies that unless the court's modification provides what the Commission regards as an adequate substitute for the Commission's ill-chosen remedy, the modification, insofar as it eliminates any prohibition of the Commission, may not stand. We do not think this Court would permit any cease and desist order to stand just because it would eliminate unlawful practice, or strike as insufficient any judicial modification thereof just because it did not guarantee complete and unqualified restraint.

In many cases decided by the courts of appeal, cease and desist orders were modified even though the modifications restricted the scope of the Commission's intended prohibitions. Many of these resulted from substantive disagreements between the courts and the Commission. *E. g. Etablissements Rigaud, Inc., et al.* v. *Federal Trade Commission,* 2 Cir., 1942, 125 F. 2d 590, and many of the cases cited in Brief for Respondents in Opposition, pp. 13-14, footnote 6. These decisions clearly went beyond a determination of whether or not a less drastic order would suffice to effectuate the Commission's intended prohibitions. They decided that the Commission's intent was improper.

We do not mean to express agreement with the action of the Court in *Dolcin Corporation, et al.* v. *Federal Trade Commission,* D. C. Cir., July 1, 1954, No. 11,700 [reprinted in Brief for Respondents in Opposition, p. 25]. We cited the case only as authority for the proposition that a court of appeals other than that for the Seventh Circuit agreed that the language of the Commission's order in this case was ambiguous and needed correction. The Court said it was modifying the *Dolcin* order "in accordance with its intended meaning." We disagree with petitioner's suggestion that "the modifications made by the Court in the *Dolcin* case * * do not change the substance of the order, * *." We submit that the Commission intended to impose the prohibitions expressed in its order, not just those implicit in its findings. So the Court properly disagreed, in substance, with the Commission's chosen remedy.

The fact that courts of appeal may modify Commission orders differently, on review, should not override Congress' intent that they have such power. Uniformity may be too dearly purchased. Congress intended unreviewable administrative expertise to extend only to factual determinations of a technical nature and not to those which the courts were equally qualified to make, such as the effect

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of an advertisement on the public. The question of a proper remedy is only "initially and primarily for the Commission." When "the administrative determination is * * made," [as here], the courts are "ready to pass on the question * * of discretion." *Jacob Siegel Co.* v. *Federal Trade Commission*, 327 U. S. 608, 612, 614. Here, the Commission had already considered and rejected the possibility of an order not containing the word "temporary." The reasonableness of that decision, as well as the ambiguity of the order was before the Court of Appeals, which decided that so drastic an order was not required to protect the public. The Court's modification was proper and should stand.

Respectfully submitted,

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August 25, 1954.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1954.

No. 80

FEDERAL TRADE COMMISSION,
Petitioner,

vs.

RHODES PHARMACAL COMPANY, INC., ET AL.,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

BRIEF FOR RESPONDENTS.

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BRIEF FOR RESPONDENTS.

STATEMENT.

Apart from emphasis, respondents cannot say that the Federal Trade Commission's statement of this case (Br. 3-11) is inaccurate. Their major criticism of such statement is that it stresses the content of certain advertising representations of respondents not here in issue and completely irrelevant to present considerations. Respondents were enjoined from making most of those representations, before administrative hearings were completed, *Federal Trade Commission* v. *Rhodes Pharmacal Co.*, 7 Cir., 1951, 191 F. 2d 744, and have lived under that injunction

ever since. The Commission's order subject hereof likewise prohibited most of the challenged advertising (R. 958-959), and only one paragraph of that order is here for review, a prohibition against advertising claims to the relief of the pains and symptoms of rheumatism and arthritis. Consequently such advertising is all that is here involved.

Respondents sell a drug product "Imdrin," in commerce, as that term is defined in the Federal Trade Commission Act. They advertise it in newspapers and on the radio.

The Federal Trade Commission brought administrative proceedings against respondents, charging that their said advertising was deceptive, in violation of the Act.

After protracted hearings, the Commission found that, while respondents so promised purchasers, "Imdrin" would not, among other things, cure rheumatism or arthritis or provide adequate, effective, or reliable treatment for, or arrest the progress or correct the underlying causes of any such conditions. The Commission ordered respondents to cease and desist from making such claims *to therapeutic effect*. Such orders are not here in issue.

The Commission also found that "Imdrin" would afford only *temporary and partial relief of minor aches and pains* of rheumatism and arthritis, and accordingly ordered respondents to cease and desist from representing that "Imdrin" would afford any greater relief.

On review, the Court of Appeals for the Seventh Circuit, 208 F. 2d 382, 387 [7-9], said that "the findings of the Commission are supported by substantial evidence" (R. 979), but also, at p. 388 (R. 980), that:

> "It was overwhelmingly established in the case at bar that Imdrin affords relief for the pain and discomfort incident to many rheumatic and arthritic conditions. That duration of time that such relief was

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afforded differed with the individuals who used Imdrin. * * *"

The Court further found that the order of the Commission which would require respondents to advertise "Imdrin" as affording only "temporary" pain relief was "indefinite or ambiguous" (R. 979) and of "uncertain meaning" (R. 980), and that reference to "temporary" in the order should be "eliminated" (R. 979). Accordingly, the Court of Appeals modified the Commission's order so as to prohibit respondents from advertising only that "Imdrin" will afford any "permanent" relief of the aches and pains of such conditions (R. 980, 981), or "cure" the symptoms.

The Court of Appeals denied the Commission's petition for rehearing, and this Court granted certiorari. 348 U. S. 812.

SUMMARY OF ARGUMENT.

I.

Two courts of appeal agreed that the Commission's order here in issue was "ambiguous" and undesirable; the District of Columbia Court thought that respondents would not know how to comply with it; the Court below said it might require respondents to advertise that "Imdrin" would provide only "temporary" relief of arthritic pain, and that this term was of "very uncertain meaning" and its use unnecessary to protect the public.

Respondents could not know how they were expected to satisfy the order, specifically, whether they would be obliged to use the word "temporary" in their advertising or not. The Commission has vacillated in its interpretations as to how respondents could comply. It has said both that respondents can represent that Imdrin will give only temporary relief and that the order does not require them to do so. Neither the Commission's explanations nor its findings will alleviate this ambiguity. Practically, respondents must risk contempt proceedings to comply. Moreover, should they elect to comply by using the word "temporary", it will be misunderstood by the public and its use will unjustly prevent respondents from advertising the truth, that Imdrin will provide pain relief of different duration to different individuals.

The use of the term "temporary" [pain relief] is unnecessary to protect the public from deception. It is splitting hairs to attempt to distinguish between relief that is "not permanent" and that which is temporary. We are not concerned with the fact that the Commission's experts used the term in testifying to what Imdrin could do.

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That is not the equivalent of stating the impression which the term might give an ordinary buyer, which is the proper standard. Many of these might erroneously suppose that the relief afforded all persons would be only a few minutes. This would prevent respondents' advertising the truth.

Courts have avoided the use of such relative and indefinite terms as "temporary" in advertising, wherever possible. In most instances where they have approved orders which *happened* to contain such adjectives, no objection was raised. In the cases relied on by the Court below, it rejected the use of "temporary" for good reason.

Nor can it be said that the Commission could not frame an appropriate order not including the term "temporary" on account of the shortcomings of our language. It suggested other phraseology to the Court of Appeals on petition for rehearing, and both that Court and the one for the District of Columbia drafted alternative orders not requiring the use of the objectionable term, a total of four possibilities. Our language is not that impoverished.

And despite the fact that the Commission may have issued orders containing the word "temporary" in some fourteen cases, this Court has never hesitated to reverse the Commission, if it was wrong. It has reversed three concurring agencies, where thousands of cases, involving millions of dollars, had been closed.

The Court below relied on its previous decisions in *D. D. D. Corp.* v. *Federal Trade Commission*, 7 Cir., 1942, 125 F. 2d 679 and *Carter Products, Inc.* v. *Federal Trade Commission*, 7 Cir., 1951, 186 F. 2d 821, which were clearly right. Petitioner now, for the first time, claims they were wrong, instead of attempting to distinguish them on the facts from this case. It cannot be seriously denied that "*relief* [from itching] could * * * carry no implication to the public that the product was a permanent cure for the

symptoms * * *." Even the dissenting judge agreed on that point. Neither can it be contended that the word "temporary" does not "carry an uncertain meaning" or that "to require its use would serve no purpose in the protection of the public, but might limit [respondents] in truthfully representing [their] product."

Neither *National Labor Relations Board* v. *Express Publishing Co.*, 312 U. S. 426, nor *Federal Trade Commission* v. *Cement Institute*, 333 U. S. 683, cited by petitioner, are apposite. We have no quarrel with the proposition that a Commission order must be reasonably specific in telling a respondent what he must do, but that is not to say that every ambiguous order is sufficiently specific. And even if respondents knew certainly how to comply, the order would be ambiguous to a potential buyer. The Commission admits its order is indefinite. We believe it too vague to stand. The Court below properly rewrote it.

II.

We disagree with the Commission's contention that the Court of Appeals could not rewrite its ambiguous order so as to reduce its scope of relief. Respondents concede that the Commission has discretion initially to select the remedy and that courts are reluctant to disturb that choice if the agency has made an "allowable" judgment. But respondents insist that this does not preclude judicial review, and the Commission admits that it may be reversed if its remedy bears no reasonable relation to the evil found to exist or is unduly harsh or burdensome.

Petitioner's misconception stems from an erroneous idea that it is an inflexible rule that courts will not substitute their judgments for those of the "responsible" agency. This is untrue. Courts frequently do so, and they must where they find no "rational basis" for the agency's act.

This Court has done so on numerous occasions, as have the courts of appeal. This Court's substitution of judgment for that of the agency has extended to the selection of the remedy. There is no way to reconcile the holdings in those cases in which it has substituted its judgment for that of the agency with those in which it has refused to do so other than on the basis of *judicial discretion.* Residual judicial discretion in proceedings of an equitable nature is entirely proper. There is a wide margin for judicial discretion in making the choice between substitution of judgment and examining for "rational basis."

A remedy selected by the Commission is not rational or reasonable simply because it prohibits an unlawful practice. It must not go further than necessary to curb the evil or be harsh or burdensome. The Court below found the order here in issue unnecessary and thus without rational basis.

While the Commission has always insisted otherwise, complete restraint is not always necessary to the protection of the public. This Court has so decided.

The Court of Appeals modified the order in a manner which *sufficiently* preserved the Commission's justifiable intent. It cannot be true that unless the Court can redraft a Commission order so as to effectuate completely the Commission's intent, proper or improper, it is precluded from making any possible revision in the order. That is too narrow a construction of the statutory authority to "modify". Neither is repeated remand to the agency required, where the Court sees that the agency has considered and unjustifiably rejected a less severe remedy. The Court's qualifications are equal to those of the agency in this field of agency competence. The moral concept of an unfair order is within quick judicial grasp.

The Court below found, in effect, that the Commission's order was unduly harsh, since it unnecessarily prohibited

respondents from advertising the truth. This is an unjustified interference with the lifeblood of their business, which is as much a vested property right as the right to use a trade name, *Jacob Siegel Co.* v. *Federal Trade Commission,* 327 U. S. 608, or a sales plan, *Federal Trade Commission* v. *Beech-Nut Packing Co.,* 257 U. S. 441. Consequently the Court's modification was proper.

ARGUMENT.

The Federal Trade Commission ordered respondents to cease and desist from advertising, *inter alia*, that their drug product, "Imdrin", would "afford any relief * * * in excess of *temporary* * * * of * * * [the] * * * pains" of arthritis or rheumatism. (R. 959.) The Court of Appeals for the Seventh Circuit modified the order by deleting the word "temporary" and prohibiting respondents instead from representing that "Imdrin" would "afford any *permanent* relief of [such] pains * * *." (R. 981.) [Emphasis supplied.]

Petitioner now argues that the judgment of the court of appeals, in so far as it modified this part of paragraph 1(c) of the Commission's order, should be reversed, for two reasons: (1) because the word "temporary" in said order was not "indefinite" or "ambiguous" enough "to require its elimination";[1] and (2) because the court below "erred in modifying the [ambiguous] order in a way that substantially reduced the scope of the relief prescribed by the Commission."[2]

I.

THE COMMISSION'S ORDER WAS SO AMBIGUOUS IT REQUIRED MODIFICATION.

The term "temporary" in the context of this case was too ambiguous, indefinite, uncertain and vague to be retained in the Commission's order. The literal terms of the order also leave doubtful and uncertain whether or not respondents must use the term "temporary" in their

1. Brief for Federal Trade Commission, p. 15.
2. Brief for Federal Trade Commission, p. 26.

advertising in order to comply with the Commission's order.

Not only did the Court of Appeals for the Seventh Circuit characterize the word "temporary" in the Commission's order as "indefinite", "ambiguous" and "of * * * very uncertain meaning" (R. 979-980); the Court of Appeals for the District of Columbia Circuit agreed that its use in a substantially identical order[3] "leaves an undesirable ambiguity" requiring modification.

The Commission itself concedes that a requirement for the use of the term "temporary" in advertising representations is "indefinite as to the duration of the effectiveness of the preparation." (R. 965). But it has said, at various times:

> (1) "Such a requirement * * * can be satisfied by *any* representation which shows that lasting relief is not claimed";[4]
>
> (2) "[Respondents] may, of course, use the word 'temporary', although the Commission's order *does not require* them to do so";[5] and now
>
> (3) "Respondents can comply by 'merely being accurately true in [their] advertisements,' * * * *i. e., by representing* that Imdrin will give *only* 'temporary and partial' relief.'"[6] [Emphasis supplied.]

It would therefore seem that this language is doubtful and ambiguous.[7] In or out of context, it is susceptible of the

3. *Dolcin Corp. et al.* v. *Federal Trade Commission*, CADC, No. 11700, July 1, 1954. See Brief of Respondents in Opposition, p. 26.

4. Opinion of the Commission (R. 965).

5. Petition for a Writ of Certiorari, p. 15, fn. 10.

6. Brief for Federal Trade Commission, p. 17.

7. "* * * before it can be said that there is no ambiguity, the court must conclude that the controversial words are only capable of one interpretation * * *" *Buchanan* v. *Swift*, 7 Cir., 1942, 130 F. 2d 483, 485.

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interpretation that respondents must use the term "temporary" in their advertising or are excused from so doing. The Court below clearly assumed that use of this objectionable term might be required by the Commission's order and observed that "The word 'temporary' carries an uncertain meaning" (R. 980), "that it might mean only a few minutes." (R. 979).[8] On its part, the Court of Appeals for the District of Columbia Circuit expressed doubt as to what was required to comply with the order, saying:[9]

> "The Commission says that petitioners, in complying with the order as written 'are not required to use the word "temporary". They can comply by merely avoiding the use of such phrases as "prolonged relief".' (Br. 39.) Although the Commission does not say so, like reasoning would seem to permit petitioners to avoid using the word 'minor'. *This* leaves an undesirable ambiguity. * * *" [Emphasis supplied.]

The Commission's vague and vacillating interpretations of how respondents can comply with its order are ineffective to relieve this ambiguity. In *J. I. Case Co.* v. *National Labor Relations Board*, 321 U. S. 332, 340-341, this Court said:

> "The Board however, would construe the order more narrowly than its terms suggest. It says, 'the provision in question, is based upon [a] finding. * * * Read in the context of this finding, the requirement of the cease and desist provisions enjoins petitioner only from continuing to derive benefits * * * [etc.].
>
> "We agree, but the literal language of the order may well be read in quite different meaning, especially

8. The Court below found, however, that: "It was overwhelmingly established in the case at bar that Imdrin affords relief for the pain and discomfort incident to many rheumatic and arthritic conditions. The duration of time that such relief was afforded differed with individuals who used Imdrin. * * *" (R. 980.)

9. *Dolcin Corp. et al.* v. *Federal Trade Commission*, CADC, No. 11700, July 1, 1954. See Br. of Resp. in Opp., p. 26.

> when separated from findings and standing alone in the Court's enforcement order. It then becomes the language of the Court, and the Court would not be bound to look upon the Board's construction as its own. Questions of construction had better be ironed out before enforcement orders issue than upon contempt proceedings. A party is entitled to a definition as exact as the circumstances permit of the acts he can perform only on pain of contempt of court. Nor should he be ordered to desist from more on the theory that he may violate the literal language and then defend by resort to the Board's construction of it. Court's orders are not to be trifled with, nor should they invite litigation as to their meaning. It will occur often enough when every reasonable effort is made to avoid it. * * *"

It is therefore clear that if the word "temporary" were permitted to remain in the Commission's order in this case, especially in view of the Commission's changing attitudes with respect to what is required to comply with this provision, respondents would have "real doubt as to the meaning of the words used by the Commission"[10] and as to what was expected of them to comply with same. It cannot be said that, considered in context, they would understand. Under the language of the Commission's order, the question is: Must respondents use the word "temporary" in their advertising or not? And if they must employ the term as the only means by which they can comply, is it not of "uncertain meaning" and its use unnecessary to the protection of the public?

The Court of Appeals did not confine itself to saying that it "disapproved of the use of the word 'temporary' because of its very uncertain meaning." (R. 980.) In citing with approval its earlier decisions in *Carter Products, Inc.* v. *Federal Trade Commission*, 7 Cir., 1951, 186 F. 2d 821, 826, and *D. D. D. Corp.* v. *Federal Trade Commission*,

10. Cf. Brief for Federal Trade Commission, p. 17.

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7 Cir., 1942, 125 F. 2d 679, 682, it observed (R. 979):

> "We think in the case at bar, as we did in the *D. D. D.* case, that *protection of the public does not require* petitioners to use the word 'temporary' or 'temporarily', and that to require its use would be unfair to the petitioners in representing the truth * * *." [Emphasis supplied.]

In other words, the use of the term "temporary" was unnecessary and undesirable as well as ambiguous.

But the Commission says that its medical experts used the term "temporary" in their testimony, so it must have been apt and meaningful to them. This Court is not here concerned with the terminology used by the medical profession or its understanding of the meaning of words. The important criterion is the net impression the advertisement is likely to make upon the general public. *Chas. of the Ritz* v. *Federal Trade Commission*, 2 Cir., 1944, 143 F. 2d 676, 679; *United States* v. *88 Cases* * * * *Bireley's Orange Beverage*, 3 Cir., 1951, 187 F. 2d 967, 971. Medical experts discussing scientific matters do not necessarily react as members of the general public. The scientific mind, ever mindful of the need for complete accuracy of statement, commonly avoids specificity. Their testimony as to what a drug will do is not to be confused with their opinions as to what an ad would mean to readers.

The Commission says that the term "temporary" does not convey the same meaning as "less than permanent"; that there is a middle area of representation, connoting a period of duration that is more than temporary but less than permanent; and that this is not "hair-splitting".[11] If the Commission feels that the Court's modified order will permit respondents to advertise that Imdrin will afford "prolonged" pain relief, does this not prove that the Commission expects respondents to use the word "tem-

11. Brief for Federal Trade Commission, p. 18.

porary" in their advertisements? Nowhere do they say that the *unmodified* representation that respondents' product will afford just pain "relief" will suffice. Therefore, they expect this admittedly indefinite term to be used. Under the Commission's order, respondents could not advertise, as "was overwhelmingly established in the case at bar that Imdrin affords *relief* from the pains and discomfort incident to many rheumatic and arthritic conditions. The duration of time that such relief was afforded differed with the individuals who used Imdrin." (R. 980.) That is the truth, as found by the Court below, yet respondents could not so represent under the Commission's order, as such representation could not be precisely equated to saying that the relief afforded was "temporary." We submit that the Commission's refusal to consider "not permanent" as the practical equivalent of "temporary" in this case is unwarranted "hair-splitting" and unreasonable administrative action.

Relative terms of doubtful meaning in an order are to be avoided in so far as possible. *J. I. Case Co.* v. *National Labor Relations Board*, 321 U. S. 332, 340-341. While their use has not been specifically proscribed, neither does such use fall within any authorized standard of delegation by Congress or within the orbit of reasonable administrative discretion. It is true that the courts have sometimes approved orders which *happened* to contain such relative terms as "temporary", but they have not usually approved of the use of those terms in such orders where objection was made.[12]

12. In *Fairyfoot Products Co.* v. *Federal Trade Commission*, 7 Cir., 1935, 80 F. 2d 684, relied on by petitioner (Br. for F.T.C., p. 19, fn. 7), the only issues before the Court below were the truth or falsity of the advertising and the legal effect of discontinuance of the challenged practices and of an offer of refund to dissatisfied customers. The propriety of including "temporary" in the order was not questioned.

Similarly, In *Dr. W. B. Caldwell, Inc.* v. *Federal Trade Com-*

And in answer to the Commission's assertion that language being what it is, it had no choice but to use the word "temporary" in its order, it is noteworthy that:

(1) On appeal to the Commission from the Initial Decision of the Hearing Examiner, counsel supporting the complaint suggested alternative phraseology acceptable to the Commission (R. 942);

(2) Again, on its petition for rehearing the Commission suggested to the Court below a different amended paragraph 1(c) (R. 984);

(3) The Court of Appeals for the Seventh Circuit found it possible to re-write the offending order in a third way it thought adequate to protect the public (R. 980); while

(4) The Court of Appeals for the District of Columbia Circuit found a fourth method of rephrasing the prohibition satisfactory to itself. (Resp. Br. in Opp. 26-27.)

We submit that our language is not so impoverished that the Commission had no alternative but to employ the word "temporary" in its order. And if the Commission believed its original order in this case appropriate and specific enough for the "particular evils at which it is directed",[13] respondents ask why the Commission, on its

mission, 7 Cir., 1940, 111 F. 2d 889, the sole issues were the truth of the advertising, the question of public interest, and the vagueness of the order in other respects than its employment of the term "temporary."

Again, in *Sebrone Co.* v. *Federal Trade Commission*, 7 Cir., 1943, 135 F. 2d 676, there does not seem to have been any objection to the inclusion of the term "temporary" in the order. The issues were the truth or falsity of the representations and the meaning of the advertisements.

Only in *Concrete Materials Corp.* v. *Federal Trade Commission*, 7 Cir., 1951, 189 F. 2d 359, does the question here involved appear to have been raised, with respect to a waterproofing agent for concrete.

13. Brief for Federal Trade Commission, p. 22.

petition for rehearing in the Court of Appeals, professed willingness that the Court enter an order without a requirement that respondents use the term "temporary" if that Court would restore the prohibitions it had deleted from the Commission's order with respect to relief of "severe" pains and relief of other symptoms of rheumatism and arthritis.[14]

The fact that the Commission may have erroneously required some fourteen manufacturers or sellers of various products to cease and desist from advertising that they would have more than temporary effect[15] should not be controlling in this case. If the Commission is wrong, it should be reversed or its order appropriately modified. This Court has not refused to reverse even where thousands of cases had been differently decided by the administrative agencies or were adversely affected by the Court's decision.[16]

The Court below based its decision in this case on its thinking in its two previous decisions in *D.D.D. Corp.* v. *Federal Trade Commission*, 7 Cir., 1942, 125 F. 2d 679 and *Carter Products, Inc.* v. *Federal Trade Commission*, 7 Cir., 1951, 186 F. 2d 821. The Commission now contends that these decisions were wrong.[17] This is at variance with the position petitioner has heretofore taken. Up to this point, it has urged only that these cases were distinguishable

14. Brief for Federal Trade Commission, pp. 28-29, fn. 17. (R. 984.) Cf. order in *Dolcin Corp. et al.* v. *Federal Trade Commission*, Ibid.

15. Brief for Federal Trade Commission, p. 22, fn. 13.

16. Despite the concurrence of three agencies in the view that back pay was not wages, and despite the fact that more than 30,000 individual employees had been allowed back pay in "closed" cases by the NLRB, the aggregate amount exceeding $7,700,000.00 in the fiscal years 1939 to 1944, this Court set aside the Board's ruling. *Social Security Board* v. *Nierotko*, 327 U. S. 358, 360, n. 4.

17. Brief for Federal Trade Commission, p. 24.

from those in which "temporary" had been allowed in an order, on the basis of the nature of the product involved in each case. (R. 941, 965.)

We respectfully submit that the decisions followed by the Court of Appeals were right in principle and correctly applied. The Court said in both previous cases:[18]

> "[4] We are also of the view that the word 'temporary' as used in Paragraphs 1(a), (b), (c), (e) and (g) of the Commission's order should be eliminated. We see no reason why petitioner should not be permitted to represent its product as a relief for itching. It does not cure either the itch or its cause, but it does afford relief. One of the definitions given by Webster for the word 'relief' is 'lessens evil, pain, etc.' The words '*relief* from itching' could, in our minds, *carry no implication to the public that the product was a permanent cure* either for the symptoms or the disease. The word 'temporary' carries an uncertain meaning. As the Commission's doctor stated: 'It might mean a few minutes, or an hour or so.' To require its use would serve no purpose in the protection of the public, but might limit petitioner in truthfully representing its product."[19]

It is not correct to say that only a majority of the Court of Appeals believed that the word "relief" carried no implication to the public that the product was a permanent cure for the symptoms of the disease.[20] The entire Court, including the dissenting judge, agreed on this point.[21] Mr. Justice Minton thought only that the relief afforded could be more accurately described by employment of the ad-

18. 125 F. 2d 679, 682 and 186 F. 2d 821, 826.

19. Even Judge Minton, now Mr. Justice Minton, dissenting in the *D.D.D.* case, *supra*, agreed that: "I do not believe the word 'relief' means permanent relief alone * *." (Opin. p. 682.)

20. Brief for Federal Trade Commission, p. 23.

21. See footnote 19.

mittedly uncertain term "temporary."[22] We cannot appreciate how the use of the term "temporary" with respect to relief of pain, in respondents' advertisements, would better inform a prospective purchaser of the drug of its limitations than a simple claim to "relief" alone, but it might tend to confuse him as to the duration of the relief afforded and arouse doubts sufficient to deter his purchase.

In any event, there is nothing in the foregoing which detracts from the proposition that "temporary" is a relative term of uncertain meaning. The Commission admits it.[23] It contends only that the Court below was "wrong" in deleting from the Commission's order an indefinite term, capable of conveying an erroneous impression to the purchasing public, so long as the order in question makes known "with reasonable specificity the acts which the respondent is to do or refrain from doing."[24] It does not follow from the fact that a respondent may have been told with reasonable specificity what he can say in an advertisement, and so is enabled to comply with the order, that the language he is obliged to use may not convey an erroneous impression to readers. Neither *National Labor Relations Board* v. *Express Publishing Co.*, 312 U. S. 426 nor *Federal Trade Commission* v. *Cement Institute*, 333 U. S. 683, cited by petitioner, are apposite. In so far as these cases announce the doctrine that reasonable specificity in a Commission's order is all that is required, we

22. Ibid. "We think that neither the purpose nor the terms of the act are so broad as the encouragement of the informative function [of advertising]. Both purpose and terms are to prevent falsity and fraud, a negative restriction. When the Commission goes beyond that purpose and enters upon the affirmative task of encouraging advertising which it deems properly informative, it exceeds its authority." *Alberty* v. *Federal Trade Commission*, CADC, 1950, 182 F. 2d 36, 39 [3, 4].

23. Brief for Federal Trade Commission, p. 18.

24. Brief for Federal Trade Commission, p. 23.

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have no quarrel with that general proposition, but it is not equivalent to saying that ambiguous orders *are* reasonably specific. In the *Express Publishing Co.* case, this Court, after stating that an injunctive order must be reasonably specific, found the Board's order too broad. In the *Cement Institute* case, it found that when the prohibitions of the order were read in the light of its preamble, they were sufficiently specific to apprise respondent of the requirements for compliance. Neither case shows how a prospective buyer of Imdrin would know that "temporary" pain relief did not mean for a few minutes only, or that the product would provide relief of greater duration to many persons.

In view of the foregoing, it is clear that the Court of Appeals correctly decided that the Commission's order was vague and uncertain enough to require modification.

II.

THE COURT OF APPEALS PROPERLY MODIFIED THE COMMISSION'S ORDER BY RE-WRITING IT IN THE MANNER IT DID IN THIS CASE.

It is petitioner's further contention that even if its order was so ambiguous as to require modification, the Court below could not properly re-write it in a way that substantially reduced the scope of the relief prescribed by the Commission.[25] This contention is likewise without merit.

Respondents can agree that the Commission has discretion in the choice of a remedy deemed adequate to cope with the unlawful practices found to exist, *Jacob Siegel Co.* v. *Federal Trade Commission*, 327 U. S. 608, 611, and that the statutory scope of judicial review is limited to ascertaining whether the Commission made an allowable judgment in its choice of a remedy, Ibid, p. 612. But re-

25. Brief for the Federal Trade Commission, p. 22.

spondents show that the problem of ascertaining what sanction to invoke "is a question [only] initially" for the Commission. Neither the statute nor this Court's interpretation of it were meant to bar review of the Commission's selected remedy or to prohibit modification of the Commission's order. The Commission concedes that the "courts will * * * interfere * * * where the remedy selected has no reasonable relation to the unlawful practices found to exist."[26] *Siegel* case, *supra*, p. 613.

Petitioner's misconception stems from its fallacious assumption that there is an inflexible "rule prohibiting a reviewing court from substituting its judgment as to the remedy for that of the responsible administrative agency."[27] In the *Siegel* case itself, this Court substituted its judgment for that of the agency, although it did not re-write the Commission's order. It was the agency's intention to prohibit petitioner's use of its trade name, but this Court thought such action unduly harsh and expressed doubt whether the ends of the act might not be satisfied and the trade name at the same time saved. Ibid., p. 613.

The courts' reluctance to interfere with administrative discretion in the remedies chosen by the agency is not inflexible. *National Labor Relations Board* v. *National Biscuit Co.*, 3 Cir., 1950, 185 F. 2d 123, 124; *Alberty* v. *Federal Trade Commission*, CADC, 1950, 182 F. 2d 36, cert. den. 340 U. S. 818. This Court has substituted its judgment for that of administrative agencies on numerous occasions. *U. S.* v. *Carolina Freight Carriers*, 315 U. S. 475, 490; *Davies Warehouse Co.* v. *Bowles*, 321 U. S. 144; *Duquesne Warehouse Co.* v. *Railroad Retirement Board*, 326 U. S. 446; *Otis & Co.* v. *Securities and Exchange Commission*, 323 U. S. 624; *Securities and Exchange Commis-*

26. Brief for the Federal Trade Commission, p. 27.
27. Brief for the Federal Trade Commission, p. 30.

sion v. *Central Illinois Securities Corporation*, 338 U. S. 96; *Unemployment Compensation Commission* v. *Aragon*, 329 U. S. 143. Such substitution of judgment has been with respect to the remedy chosen by the Commission. *Federal Trade Commission* v. *Eastman Kodak Co.*, 274 U. S. 619; *Federal Trade Commission* v. *Beech-Nut Packing Co.*, 257 U. S. 441. See also: *Gt. Northern Ry.* v. *Merchants Elevator Co.*, 259 U. S. 285, 291; *Board of Governors* v. *Agnew*, 329 U. S. 441; *U. S .v. Silk*, 331 U. S. 704; *Rutherford Food Corp.* v. *McComb*, 331 U. S. 722.

In *Federal Trade Commission* v. *Eastman Kodak Co.*, 274 U. S. 619, the Commission found that the Eastman Company, for the purpose of maintaining its monopoly, acquired three laboratories. It ordered that the Company should sell same to disinterested third parties. This Court substituted its judgment for that of the Commission, with respect to the Commission's choice of a remedy. It affirmed the decree of the Court of Appeals setting aside the order in so far as it required the company to sell its laboratories.

Similarly, in *Federal Trade Commission* v. *Beech-Nut Packing Company*, 257 U. S. 441, this Court in effect completely re-wrote the Commission's cease and desist order which prohibited respondent from carrying out a plan of resale of its products.[28] The modification materially changed the scope of the relief the Commission believed necessary to cope with the evil found to exist. The Court substituted its judgment for that of the "responsible" agency, with respect to the remedy so selected, and properly so. *Federal Trade Commission* v. *Royal Milling Co.*, 288 U. S. 212, 218; 15 U. S. C. § 45(c); and see *Folds* v. *Federal Trade Commission*, 7 Cir., 1951, 187 F. 2d 658, 661

28. Cf. the original order of the Commission, 257 U. S. 441, 444, fn. 1, with the order approved by the Court, Opin. pp. 455-456.

[3] and *Carter Products, Inc.* v. *Federal Trade Commission*, 7 Cir., 1951, 186 F. 2d 821, 826 [4, 5].

And in *Jacob Siegel Co.* v. *Federal Trade Commission*, 327 U. S. 608, relied on by petitioner, this Court reversed the Commission's order requiring the excision of petitioner's trade name, the remedy prescribed by the Commission. The Court said it was "left in the dark" whether a less drastic order would suffice and was "not ready to pass on the question whether the limits of discretion have been exceeded in the choice of the remedy until the administrative determination is first made." In our case, the Commission has already considered and rejected a less harsh remedy (R. 964-965), so the Court may now pass on the rational basis, if any, for such allowable judgment. The decision of the Court of Appeals in the *Siegel* case was predicated on its belief that it was not "still in control of the remedy." (150 F. 2d 751, 756 [7].) This Court reversed.

There have been numerous cases since the *Siegel* case, *supra*, in which this Court has substituted its judgment for that of an administrative agency.[29] Many courts of appeal have done the same.[30]

Since the *Siegel* case, this Court denied certiorari in *Federal Trade Commission* v. *Alberty*, 340 U. S. 818, where the same question was raised. The Court of Appeals for the District of Columbia Circuit materially altered the scope of the cease and desist order issued by the Commis-

29. *Securities and Exchange Commission* v. *Central Illinois Securities Corp.*, 338 U. S. 96; *Unemployment Compensation Commission* v. *Aragon*, 329 U. S. 143 (substitution in part); *Board of Governors* v. *Agnew*, 329 U. S. 441; *U. S.* v. *Silk*, 331 U. S. 704; *Rutherford Food Corp.* v. *McComb*, 331 U. S. 722; *Social Security Board* v. *Nierotko*, 327 U. S. 358.

30. *Alberty* v. *Federal Trade Commission*, D. C. Cir., 1950, 182 F. 2d 36, Cert. den. 340 U. S. 818; *Folds* v. *Federal Trade Commission*, 7th Cir., 1951, 187 F. 2d 658.

sion against the respondent, a food and drug manufacturer, substantially reducing the scope of the relief prescribed by the Commission.[31] *Alberty* v. *Federal Trade Commission*, D. C. Cir., 1950, 182 F. 2d 36. As a reason for granting the writ, petitioner stated that:[32]

> "The decision below is also in conflict with applicable decisions of this Court defining the limits of judicial review of the Commission's determination of the remedy requisite to prevent continuation of prior illegal practices. The controlling principles were clearly laid down in *Jacob Siegel Co.* v. *Federal Trade Commission*, 327 U. S. 608. * * *"

Nevertheless, this Court declined to grant the writ. The only difference between the *Alberty* case and that at bar was that in the former, the Court of Appeals quoted the rule from the *Siegel* case that courts will interfere only "where the remedy selected has no reasonable relation to the unlawful practices found to exist" and expressly held that it bore no such reasonable relation,[33] while in our case, the Court of Appeals did not make any such express finding of lack of "rational basis." However, respondents believe that such a finding is implicit in the findings of the Court below that the inclusion of the word "temporary" in the Commission's order was "unnecessary" and "ambiguous". (R. 979.)

In *Securities and Exchange Commission* v. *Central-Illinois Securities Corp.*, 338 U. S. 96, 127-128, this Court said:

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31. For the extent of the modification, see 182 F. 2d 36, 37, 40 [5]. The Court excused the advertiser from representing not only that their drug product was of benefit only when the condition treated arose from a given cause, but also *that such cause existed infrequently.*

32. Petition for Certiorari, No. 131, Oct. Term 1950, p. 18.

33. 182 F. 2d 36, 39.

> "Even within the latitude allowed by our present *ruling for the play of the Commission's judgment*, it remains to consider whether in this case the Commission has complied with the statutory standards * * *."

The Court substituted its judgment for that of the Commission on each question of the meaning of "fair and equitable", something which it had refused to do in *Securities and Exchange Commission* v. *Chenery Corp.*, 332 U. S. 194, 208.[34] The difference in the scope of review in these cases "does not lie in the distinction between generalizing and particularizing. * * * Neither case involved analysis of legislative history. Both cases involved problems within the SEC's special field of competence but not so technical as to be beyond the range of quick judicial grasp.[35] The best explanation may be in terms of *judicial discretion.*" Davis, "Administrative Law", 1951, p. 891. [Emphasis supplied.] Respondents believe the Court below had, and this Court on review, has judicial *discretion* to substitute its judgment for that of the agency in any case in which it believes the agency action lacks "rational basis."[36] Proceedings for relief injunctive in nature are

34. Cf. also: *Davies Warehouse Co.* v. *Bowles*, 321 U. S. 144 with *Gray* v. *Powell*, 314 U. S. 402; *Duquesne Warehouse Co.* v. *Railroad Retirement Board*, 326 U. S. 446 with *National Labor Relations Board* v. *Hearst Publications*, 322 U. S. 111; and see *Unemployment Compensation Commission* v. *Aragon*, 329 U. S. 143. (Substitution of judgment as to one part of order and refusal to do so as to the other.)

35. As to comparative qualifications of courts and administrative agencies, "Courts are masters of * * * non-technical words * * * [e. g. 'temporary']." Davis, "Administrative Law", 1951, p. 896. And cf.: "When the words of a written instrument are used in their ordinary meaning, their construction presents a question solely of law." Brandeis, J., in *Great Northern Railway* v. *Merchants Elevator Co.*, 259 U. S. 285, 291.

36. "Not only is the margin for judicial discretion wide in making the choice between substitution of judgment and use of "rational basis" test, but once that choice has been made the reviewing court again exercises a broad discretion in determining for the particular case the meaning of substituted judgment." Davis, "Administrative Law", 1951, §252, p. 908.

essentially equitable and, whether pursuant to statute or otherwise, contemplate that the court shall have residual discretion. Cf. *Hecht & Co.* v. *Bowles*, 321 U. S. 321, 329.

It is therefore necessary to determine whether or not there was such "rational basis" for the Commission's choice of a remedy as will support an "allowable judgment." At first blush, it would appear that any sanction which would prevent a violative practice found to exist bears a reasonable relation thereto; but on closer inspection, this appears to be an over-simplification. The Commission here contends that: "Patently the order here has a 'reasonable relation to the unlawful practices found to exist'; in plain terms it prohibited those very practices."[37] But it is fundamental that "the orders should go no further than is reasonably necessary to correct the evil and preserve the rights of competitors and public * * *." *Federal Trade Commission* v. *Royal Milling Co.*, 288 U. S. 212, 217. The Commission here knew that respondents objected to the inclusion of the term "temporary" in the order because it was unnecessary and of uncertain meaning. (R. 964.) The Commission declined to omit the word, assigning as its so-called *reason* therefor that (R. 964):

> "The Commission is of the opinion that advertising claims should *always* be so limited where only temporary relief is afforded unless by the very nature of the claim, there is no danger of deception. The danger of deception in this case lies particularly in the fact that respondents desire to represent that their preparation will afford *relief from pains due to a particular cause*, namely pains of arthritis and rheumatism. *By limiting the type of pain relief claimed, respondents imply that a lasting relief will be achieved* by eliminating the cause of the pain. * * * The Commission, *therefore*, is of the opinion that the inclusion of the word 'temporary' * * * is necessary." [Emphasis supplied.]

37. Brief for the Federal Trade Commission, p. 27.

The Court below disagreed with the Commission, holding that this part of the order was not necessary. The Court said: "We think * * * that protection of the public *does not require* petitioners to use the word 'temporary' * * * and that to require its use would be unfair to the petitioners in representing the truth * * *." (R. 979.) The Court below (and the Court of Appeals for the District of Columbia) also held that the term "temporary" is uncertain and ambiguous. In so doing, both courts have, in a sense, substituted their respective judgments for that of the Commission, but only to test the reasonableness of the Commission's action. By analogy, while a court may not weigh the evidence in a jury trial, it can consider that evidence to determine whether it would support a verdict.

The Commission's order was not reasonable or necessary. It is submitted that it does not follow, as recited in the above excerpt from the Commission's opinion, that a claim to relief of the pain of a particular condition, such as arthritis, imports more lasting relief than a claim to pain relief generally, or that the use of the word "temporary" in a cease and desist order is "therefore" required. The Court below found that:

> "The words 'relief from itching' *could*, in our minds, carry no implication to the public that the product was a permanent *cure* either *for the symptoms* [*e.g.* pain] or the disease."

So the Court found not only that it disagreed with the Commission, on the point, but that it believed that reasonable minds could not differ with respect thereto.

But even if the Commission were right as to the impression the public would derive from the words "relief of the pains of arthritis", it does not follow that any order that will prohibit such representation will be reasonable. The Commission here takes its usual position that its orders

must possess complete and unqualified restraint in all events. This Court has rejected that contention. It should be remembered that in the *Siegel* case, *supra,* the Commission in its Brief, pp. 20, 21 and 22, similarly urged:

> "The Commission, with its valid finding before it, was entitled to conclude that nothing short of prohibition of the term 'Alpacuna' would give assurance of preventing the deception springing from the use of this name. * * * '* * * If the Commission's orders are to possess any vitality, *the restraint must be complete and unqualified.* * * *' "

But this Court reversed because it was not satisfied that the ends of the act could not be effectuated without the imposition of a remedy so drastic, harsh and burdensome.

From this we see that an allowable judgment as to the choice of a remedy must be subjected to the test of logical inference; but that alone will not be determining. Since the use of the trade name was a practice complained of as misleading, it would have been entirely logical, upon a finding that such representation was deceptive, to proscribe the use of that term, and the Commission elected to do so. But this Court refused to consider the Commission's judgment "allowable."

So too, in our case, the inadequacy of milder remedies must appear. The Court below thought it would suffice to effectuate the purposes of the act if respondents were restrained from claiming that Imdrin afforded permanent pain relief; that such a prohibition coupled with "the five sections of the order which we approve[38] will very largely

38. "It is ordered that the respondents * * * cease and desist from * * *

1. Disseminating * * * any advertisement which represents * * *

(a) that the taking of said preparation will constitute an * * * effective * * * treatment for * * * any * * * kind of arthritic or rheumatic condition;

correct the misleading and deceptive representations which petitioners have made in their advertisements." 208 F. 2d 382, 388.

As pointed out in our Brief in Opposition, pp. 18-20, and in our Memorandum in Rejoinder, p. 3, the Commission's order, as modified by the court below, *sufficiently* preserves the Commission's justifiable intent to protect the public. It need not afford complete and unqualified restraint at all costs. It will prevent respondents' claiming that Imdrin is an effective treatment or cure for any kind of arthritis or rheumatism, will afford any permanent relief of the pains thereof or effect a cure of the symptoms, is a sensational new scientific discovery, will enable afflicted persons to resume their normal habits or occupations or will have any therapeutic effect upon the enzyme systems of the blood or bones. It will not prevent respondents' representing that Imdrin will relieve "severe" pains. In the Court below, respondents urged that "severe", with reference to pain, be deleted from the order.[39] The Court complied with the request and struck the term, but gave no reason for so doing. Presumably the Court felt that this term, like "temporary", was relative, ambiguous, of uncertain meaning and undesirable and unnecessary in the order. Respondents may also claim their

(b) that said preparation * * * will cure * * * any * * * arthritic * * * condition;

(c) that said preparation will afford any permanent relief of * * * pains * * * of any * * * arthritic * * * condition, or effect a cure of the symptoms or manifestations of any such condition; [as modified]

(d) that said preparation * * * is a sensational new discovery of scientific research, * * *;

(e) that persons afflicted with * * * any * * * arthritic condition * * * will be enabled * * * to resume such normal habits * * *;

(f) that the taking of said preparation will have any therapeutic effect upon the * * * enzyme systems * * *."

39. Brief of Petitioner for Review in Court of Appeals, p. 72.

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preparation affords "prolonged" relief, if they so desire, under the modified order; but the alternative, if respondents were forced to use the term "temporary", would be to deny them the right to truthfully represent that Imdrin will relieve pain, the duration of such relief varying with individuals. Such advertisements would allow a substantial number of potential customers to suppose the duration of relief incredibly short. Similarly, respondents are left free to say, if they so desire, that Imdrin will relieve arthritic stiffness or swelling. But there is no charge that they ever made such claim (R. 954, Par. 2). What the Commission charged was that respondents said Imdrin was an "effective treatment" for those symptoms or manifestations. If respondents were to claim that Imdrin will "stop" swelling or stiff joints, the Commission would immediately insist that respondents were advertising a "cure of the symptoms" of rheumatism and arthritis (*D. D. D. Corp.* v. *Federal Trade Commission*, 7 Cir., 1942, 125 F. 2d 679, 682), something which is prohibited by the modified order (R. 980, Par. 1(c)).

It would therefore appear that in the main, the Court's modified order preserves the Commission's justified intent. Insistence upon anything more than that is quibbling. With all due respect to the Commission's views to the contrary, there has been no *substantial* reduction in the scope of the relief prescribed by the Commission, except in those areas where substantive change was required.

The Commission further contends that unless the Court below could draft an adequate substitute for the Commission's order, it could not re-write the order,[40] however bad. Petitioner cites no authority for this statement, and we are unable to find any. It concedes, however, that this supposed rule is inapplicable to cases where the order is

40. Brief for Federal Trade Commission, p. 28.

without "rational basis". We believe this is such a case and that the Court of Appeals implicitly so found. And we know of no rule which requires the remand to the Commission for further study of all its orders with which the reviewing court cannot agree. Where the agency has rejected for what the Court considers insufficient cause a less drastic remedy of substantially equal effect, we think that Congress, by conferring on the courts the power to modify agency orders, meant to short-cut a theoretically interminable process of repetitive remand and review by making the Court the final draftsman.[41] Any other interpretation would unduly confine the court's statutory power of modification to trivial cases of form and invest the agency with the ultimate power of review. Patently, Congress did not intend to so circumscribe the Court's power.

Respondents cannot believe that this Court meant to limit the application of the rule in the *Siegel* and *Eastman Kodak* cases to situations where the Commission orders the abandonment of a valuable trade name or the disposition of physical real property. It stated no such limitation, and the *Beech-Nut* case entailed no such loss of property, tangible or intangible. There, as here, all that was involved was a sales plan, in the one case a course of dealing with buyers, in the other a course of advertising. These are not distinguishable in principle. Both represent valuable vested property rights upon which the successful conduct of the businesses in question depend. Neither gives license to violate the law.

There is an inclination to view with suspicion all nostrums and drug preparations for self-medication. These

41. *Note* that after the decision below, the Commission undertook to redraft its original order in conformity with what it believed to be the Court's views (R. 984), but the Court rejected the amended order as well. This process could be continued *ad infinitum*.

products serve a useful purpose in ministering to the needs of many persons who cannot afford individualized medical treatment. There is a similar unwarranted tendency to view with disfavor many attempts to market legitimate and beneficial commodities through the media of advertising, but advertising as such, far from opposing public policy, contributes substantially to the national economy. It should be remembered that Imdrin is a meritorious product; that "it was overwhelmingly established in the case at bar that Imdrin affords relief for the pain and discomfort incident to many rheumatic and arthritic conditions." (R. 980.) There is no claim that the preparation is injurious. The only criticism of the Court of Appeals was that respondents' claims were exaggerated. We sincerely believe that the order of the Court below will curb all undue exaggeration without unnecessarily curtailing respondents' efforts to market their product by truthful advertisement. We venture that not a single person will be misled or deceived by the modified order.

CONCLUSION.

In consideration of the premises, it is respectfully requested that the order of the Court of Appeals of the Seventh Circuit be affirmed.

Respectfully submitted,

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FEBRUARY 14, 1955.

Decisions Per Curiam.

No. 80. FEDERAL TRADE COMMISSION *v.* RHODES PHARMACAL CO., INC. ET AL. Certiorari, 348 U. S. 812, to the United States Court of Appeals for the Seventh Circuit. Argued February 8, 1955. Decided February 14, 1955. *Per Curiam:* The Court finds that the order of the Commission is not ambiguous. The judgment of the Court of Appeals, insofar as it modified paragraph 1 (c) of the Commission's order, is reversed and the case is remanded to that court with instructions to restore the order of the Commission. *Daniel M. Friedman* argued the cause for petitioner. With him on the brief were *Solicitor General Sobeloff, Assistant Attorney General Barnes, Charles F. Barber, Earl W. Kintner* and *Robert B. Dawkins. Edward Brodkey* argued the cause for respondents. With him on the brief were *Frank E. Gettleman* and *Arthur Gettleman.* Reported below: 208 F. 2d 382.